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1 BEFORE THE ARIZONA CORPORATI

2 IN THE MATTER OF THE APPLICATION OF
3 ARIZONA WATER COMPANY FOR AN EXTENSION)
4 OF ITS EXISTING CERTIFICATE OF
5 CONVENIENCE AND NECESSITY.

6 IN THE MATTER OF THE APPLICATION OF
7 PALO VERDE UTILITIES COMPANY FOR AN
8 EXTENSION OF ITS EXISTING CERTIFICATE
9 OF CONVENIENCE AND NECESSITY.

10 IN THE MATTER OF THE APPLICATION OF
11 SANTA CRUZ WATER COMPANY FOR AN
12 EXTENSION OF ITS EXISTING CERTIFICATE
13 OF CONVENIENCE AND NECESSITY.

14 IN THE MATTER OF THE APPLICATION OF
15 PALO VERDE UTILITIES COMPANY FOR AN
16 EXTENSION OF ITS EXISTING CERTIFICATE
17 OF CONVENIENCE AND NECESSITY.

18 IN THE MATTER OF THE APPLICATION OF
19 SANTA CRUZ WATER COMPANY FOR AN
20 EXTENSION OF ITS CERTIFICATE OF
21 CONVENIENCE AND NECESSITY.

22 ARIZONA WATER COMPANY, AN ARIZONA
23 CORPORATION,

24 COMPLAINANT,
25 VS.

26 GLOBAL WATER RESOURCES, LLC, A FOREIGN
27 LIMITED LIABILITY COMPANY; et al.

28 RESPONDENTS.

29 AND ALL OTHER RELATED CASES.

Arizona Corporation Commission

21 DOCKETED

EVIDENTIARY HEARING

22

JUN 23 2009

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of said
4 Commission, 1200 West Washington Street, Phoenix, Arizona,
5 commencing at 9:30 a.m., on the 6th day of June, 2009.

6

7

8 BEFORE: DWIGHT D. NODES, Assistant Chief
Administrative Law Judge

9

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1 ACALJ NODES: Okay. Let's go on the record.

2 Good morning and welcome to the Arizona
3 Corporation Commission. We are scheduled this morning for
4 a hearing in the consolidated docket regarding a complaint
5 filed by Arizona Water against Global Utilities as well as
6 a number of other CC&N applications for extension.

7 My name is Dwight Nodes, and I'm the
8 administrative law judge assigned to the case. And let me
9 first take appearances.

10 On behalf Arizona Water Company?

11 MR. HIRSCH: Good morning, Your Honor. I'm
12 Steve Hirsch and with me is Rodney Ott representing the
13 co-applicant Arizona Water Company. Also at the counsel
14 table with us is vice president/general counsel,
15 Robert Geake.

16 ACALJ NODES: Thank you. And on behalf of Global
17 Utilities?

18 MR. SABO: Thank you, Your Honor. Good morning.
19 Timothy J. Sabo with the law firm of Roshka DeWulf &
20 Patten on behalf of Global Water - Santa Cruz Water
21 Company, Global Water - Palo Verde Utilities Company,
22 CP Water and Francisco Grande Utilities Company, who I
23 will collectively refer to as the Global Utilities.

24 ACALJ NODES: All right.

25 And we have Staff.

1 MR. HAINS: Yes, thank you. Good morning, Your
2 Honor. Charles Hains on behalf of Commission Staff.

3 ACALJ NODES: Let me ask first, before we take
4 opening statement, if there are any members of the public
5 that wish to come forward and be heard this morning
6 regarding this matter.

7 Okay. Yes, sir.

8 MR. MARTINDALE: Michael Martindale. I represent
9 several properties in the area.

10 ACALJ NODES: Would you come up to the microphone
11 and identify yourself for the court reporter so it can be
12 transcribed.

13 MR. MARTINDALE: Yes. Good morning, Your Honor.
14 My name is Michael Martindale, and I represent a series of
15 properties -- Santa Cruz Ranch, Solano Ranch -- and have
16 been asked by people with an interest to comment for them
17 as well today.

18 ACALJ NODES: Okay. Go ahead with whatever
19 comments you have.

20 MR. MARTINDALE: You will be hearing the specific
21 property locations later, I'm sure, but we are supporting
22 the Global interest in this matter and look forward to
23 proceeding with them if we can for service when the market
24 comes back.

25 ACALJ NODES: Okay. So are you just wanting to

1 state your support for this application?

2 MR. MARTINDALE: Yes.

3 ACALJ NODES: Or these proceedings?

4 MR. MARTINDALE: Yes.

5 ACALJ NODES: Okay. Thank you very much.

6 MR. YOUNT: Larry Yount. I represent LKY
7 Development Company, and I'm also here to support the
8 application. We have partnerships in excess of
9 5,000 acres within the Global service area.

10 ACALJ NODES: Okay. Thank you very much for
11 coming down.

12 All right. Anyone else who wishes to be heard?

13 (No response.)

14 ACALJ NODES: All right. I will turn to Arizona
15 Water first. And let me remind everyone to speak directly
16 into the microphones and make sure that the little green
17 light is on so you can be heard.

18 MR. HIRSCH: Thank you, Judge Nodes. Good
19 morning, and I will speak from the podium here.

20 This has been a long course to get here this
21 morning. I have spent a little time, as you probably
22 have, going over some of the procedural background of the
23 now consolidated cases that get us here. And I want to
24 spend a little time this morning, because that won't be
25 belabored in the testimony, concerning that path and the

1 benefits to the Commission and the public in terms of a
2 settlement that has been reached between the parties.

3 As I mentioned earlier, to start, I'm
4 Steve Hirsch. I'm here with Rodney Ott and Bob Geake for
5 Arizona Water Company, essentially a co-applicant with
6 Global presenting a cohesive application to the Commission
7 that was at one point fractured and heavily litigated and
8 now coordinated and matched in a process that we think has
9 a lot going for it and a lot to recommend to the
10 Commission in terms of future use.

11 And I think the two gentleman that we just heard
12 from indicate that the development community in Western
13 Pinal County that has been patiently and sometimes
14 impatiently waiting for this resolution of this issue that
15 has been boiling now for over three years, is happy to see
16 it come to an end in the form of this hearing and the
17 eventual decision that will be reached.

18 You will hear -- and I will speak on behalf
19 Mr. Sabo and Global as well -- here is the way we propose
20 to push forward, and I think there may be some scheduling
21 issues with Staff that we will, of course, accommodate.

22 We intend to start. We lost the coin flip, so
23 you will first hear from Bill Garfield, the president of
24 Arizona Water who filed prefile testimony, direct and
25 rebuttal. You will then hear from Mr. Fred Schneider,

1 Arizona Water's engineer, who also filed prefiled direct
2 and rebuttal. And then Graham Symmonds of Global will
3 testify on behalf of Global as the co-applicant. Then we
4 would move over to Staff at that point. And again, we are
5 willing to accommodate. I understand that Linda may have
6 a scheduling issue.

7 It's hard to project how the timing will be
8 going. We will be respectful of the fact that we have
9 prefiled testimony and not belabor points that are already
10 in the record. However, there have been some updates,
11 especially by way of maps and requests for service, that
12 have come in, one as recently as this past Friday
13 afternoon. So there will be a little bit of elaboration
14 on the record, which I think is typical in these
15 proceedings, to bring the record up to the present day.

16 On cross-examination of the Staff's witnesses we
17 agreed to flip-flop. So Mr. Sabo will lead for the
18 co-applicants on cross and then I will bring up the rear
19 on that, obviously before we get to your questions.

20 And we might -- it might help us gauge the
21 presentation here, Judge Nodes, if we have the benefit of
22 your thoughts in terms of post-trial argument or briefing.
23 I guess, frankly, we haven't talked to Mr. Hains about
24 this directly, but Mr. Sabo and I were anticipating in the
25 typical format that we would not present any degree of

1 lengthy closing argument at the close of the testimony
2 here and rather would use a briefing schedule.

3 Have you given that any thought?

4 ACALJ NODES: Yes, actually I have, and I think
5 you are correct that primarily the issue that I think we
6 need to have briefed is the issue of approval of the
7 agreement, because there are some -- I think some both
8 legal and policy issues that are kind of intertwined
9 regarding that issue as you might well expect.

10 So, yeah, I will be asking for some post-hearing
11 briefing on that issue as well as anything else that you
12 may wish to address.

13 MR. HIRSCH: Okay. Thank you. That is the way I
14 think we have gauged our presentation here going forward.

15 The first issue I want to address on opening will
16 not be part, in any detail, at least, of the prefiled
17 testimony or probably the live testimony that will be
18 taken over the next couple days, and that relates to how
19 far we have come to get here today. And a lot of this
20 will be a trip down memory lane, not always a happy trip
21 in terms of looking back and it's all supported by the
22 docketed proceedings in both the complaint proceeding,
23 0200, and the individual applications.

24 Basically a brief review of that procedural
25 history, tortured as it is, is relevant. It relates to

1 the benefits of the settlement agreement that was reached,
2 and it goes directly to what the applicants are arguing to
3 you is the wisdom of the approach of perhaps breaking with
4 Commission tradition and embracing and formally approving
5 this settlement agreement. It is also going to the issue
6 of planning areas, why under the unique circumstances
7 presented to you here both applicants are here before you
8 asking that you recommend to the Commission that the
9 planning areas that are part of the settlement agreements
10 is formally approved.

11 A brief trip: first the complaint case, which
12 started with you, 06-0200. It was filed back in March of
13 '06. So we are more then three years down the line.
14 There were three counts where Arizona Water was alleging
15 that Global was illegally conducting business as a public
16 service corporation, illegally financing the arrangement
17 of various fee demands, and most relevant to today,
18 illegally infringing on Arizona Water's CC&N and
19 interfering with Arizona Water's customers.

20 You will remember there was vigorous motion
21 practice occupying a lot of the resources of the utilities
22 involved and your own resources. I think there were a
23 couple of different motions to dismiss filed by Global
24 that we litigated.

25 Arizona Water in turn, I see in February of '07,

1 filed a renewed motion. Arizona Water was pushing for an
2 order to show case hearing, an expedited hearing, to try
3 to seek its relief.

4 In the spring of '07 there were objections and
5 responses to the procedural schedule as we were all
6 wrestling with how fast and in what manner the complaint
7 proceeding would unfold.

8 Depositions were allowed, somewhat again unusual
9 in the Commission practice, and those were noticed in June
10 of '07. And again, in a little bit of an unusual setting,
11 but one that underscores the uniqueness of this particular
12 case, depositions were taken of many of the witnesses.

13 Then there was vigorous briefing on motions for
14 protective order and discovery issues that Your Honor will
15 well recall us being before you.

16 Prefiled direct testimony was made in the
17 complaint case in August of '07. So to get us a
18 chronological view -- but there were continued discovery
19 battles primarily focused on whether or not all the facts
20 had been devolved, and they were, of course, going both
21 ways between Global and Arizona Water.

22 Arizona Water, I see in October of '07, renewed a
23 motion to compel for a protective order.

24 There was in November of '07 -- so we are now
25 approximately 18 to 20 months after the filing -- a

1 procedural order was entered setting the hearing in the
2 complaint matter before you for January 23rd of '08, about
3 a year and a half ago.

4 In November of '07 also there was supplemental
5 prefiled testimony and exhibits to track the discovery
6 that had been ordered and new information that had been
7 exchanged.

8 You ordered that the parties notify you of the
9 status of settlement discussions, and the timeline shows
10 us that the efforts that bring us here today commenced,
11 due to a number of circumstances and motivations, in the
12 '07 time frame. And they resulted in a notice of status
13 of settlement to you in January of '08, and basically the
14 message there by the co-applicants was that we are
15 engaged, we are discussing, let's put off the hearing, let
16 us continue those discussions.

17 And the motivations, you will hear a bit in the
18 testimony here and it's in the prefiled testimony, came
19 from yourself; they came from Judge Kinsey, who we will
20 turn to in a moment in the consolidated application
21 proceedings; and they came from Staff. And Staff, in
22 fact, brokered some of these early settlement discussions.
23 And Staff, in fact, you will hear came up with a concept
24 of the geographic line that has proved to be the base of
25 the settlement that we present for approval in this

1 hearing.

2 And on May 16th of '08 notice of settlement was
3 docketed. The settlement agreement itself was docketed,
4 and thereafter the steps anticipated in the settlement
5 occurred, a joint motion to consolidate, and then more
6 into the typical sufficiency issues and following up on
7 some of the engineering and related issues, requests for
8 services, et cetera, over the last year, approximately, to
9 get us to the hearing today.

10 On the CC&N front, which were cases 05-0926 for
11 Global and 06-0199 for Arizona Water primarily -- there
12 was also a CP and Francisco Grande case, which I think is
13 0300 -- and I'm not drilling down into that into great
14 detail for purposes of my opening remarks here, but they
15 commenced back in December '05. Global filed its original
16 request for CC&N extensions that aggrieved Arizona Water,
17 we might say in December of '05 -- December 28th. Arizona
18 Water filed its application for CC&N extensions, of course
19 with several overlapping areas, in March, March 29th, to
20 be exact, of '06.

21 Cross-interventions were granted. And in
22 Judge Kinsey's hearing division the parties were off and
23 running, and we can see now pretty much on a parallel
24 track with the complaint case on fighting somewhat
25 stridently over the CC&N applications each other had

1 filed.

2 The two main applications were consolidated in
3 April of '06 -- April 25th of '06. There were numerous
4 interventions by the developer community at that point,
5 some represented by counsel and some not. There were
6 numerous insufficiency issues concerning the applications,
7 a lot of work with Staff in those months.

8 Global moved to vacate the consolidation or to
9 sever the cases on June 23rd of '06. Global moved to
10 dismiss Arizona Water's application. There were disputes
11 with CP Water and CHI Construction in Judge Kinsey's
12 division.

13 And I mentioned that not to beat up on any side
14 here but to underscore that it wasn't only the complaint
15 case that was attracting a lot of attention and using a
16 lot of resources of the parties and the Commission, it was
17 also the collateral parallel CC&N cases.

18 The motions to dismiss were denied, and an
19 evidentiary hearing was set by procedural order dated
20 September 12, '06 for December of '06 -- December 14, '06.
21 So that tells us that at that time, from the dates I have
22 already given you, the complaint proceeding was beginning
23 to mature into prefiled direct -- a lot of discovery
24 battles -- and the CC&N application proceedings were set
25 for hearing at about the same time.

1 The fall and winter of '06 got us also in the
2 CC&N application proceedings into massive discovery and
3 data requests disputes, data requests numbering in the
4 hundreds. And you will remember brokering some of those
5 meetings where we literally sat here for several hours and
6 went through each of them. And the parties reached
7 agreement or you directed us as to that agreement with
8 formal rulings on the discovery issue.

9 By November of '06 the parties had moved to
10 continue the hearing schedule briefly in the CC&N
11 application. The hearing was continued to March of '07 by
12 procedural order in November of '06.

13 More prefiled testimony -- prefiled -- direct
14 prefiled testimony was submitted in January of '07 in the
15 CC&N cases, and then a seminal event in that proceeding,
16 which you may very well recall, was argued to
17 Judge Kinsey.

18 On February 26 of 2007 Arizona Water moved to
19 stay the CC&N application proceedings. And the argument
20 at that point, which ended up carrying the day and being
21 granted by Judge Kinsey, was that we needed to defer to
22 the complaint, the 0200 case, then pending before you and
23 to have answers on the seminal issues that the parties
24 were litigating in that matter and in the generic docket
25 before we could proceed forward with the CC&N applications

1 knowing what the underlying answers were to some of those
2 more general issues that had been raised.

3 We also had issues concerning the acquisition
4 after CP Water and Francisco Grande Water Company at that
5 point. So the hearing was stayed by an order -- well, it
6 looks like it was stayed on February 28th of '07. Further
7 briefing was ordered on whether this docket, that was the
8 CC&N application dockets, which were consolidated and the
9 200 docket should be -- how they should be handled going
10 forward.

11 We continued with motions to compel and discovery
12 issues, cross motions, a lot of briefing, a lot of ongoing
13 discovery through '07 in the CC&N cases. And by the end
14 of '07 the CC&N matters were being folded into this
15 general approach to settlement of resolving all of the
16 issues, including the 0200 cases. And that led catching
17 us up on the time frame to the filing of the settlement
18 agreement in May '08 and the motion to consolidate all of
19 the cases in June of '08. And that joint motion was
20 granted on August 5th of '08 by Your Honor bringing us
21 here today.

22 Now, I spent a little time going over that
23 because I think in my office it was two file drawer
24 folders, so probably on the order of six to eight feet of
25 paper. I am sure it was same in Mr. Sabo's office, and

1 I'm sure it was approaching that in Staff's file drawer
2 and in your drawer. So the efforts that have brought us
3 here today, I want to underscore, the evidence will show,
4 here shows tremendous efforts on the part of the
5 state's -- two of the state's largest water utilities,
6 certainly the largest water utilities that have undertaken
7 planning efforts in Western Pinal County, and they
8 achieved a settlement of a myriad of complex and
9 challenging issues.

10 It shows tremendous effort to support and
11 encourage the use of reclaimed water. The record shows
12 tremendous effort to support and encourage coordination
13 with existing wastewater providers, an effort to
14 underscore and motivate future planning for engineering
15 factors that go into the delivery of water service.

16 The settlement agreement and planning areas that
17 are being presented to you in this hearing resolve not
18 only all the past complex issues that I summarized in the
19 many, many pleadings that went into all of these cases,
20 but they look forward. Adopting a settlement agreement
21 under these circumstances and importantly adopting and
22 formally approving the planning areas will not only
23 resolve the present dispute but will pay future dividends
24 towards revolving future potential litigated issues
25 between these two providers in Western Pinal County.

1 And it is a unique geographic area, the record
2 will show as it unfolds here in this hearing. It's a
3 tremendous growth area, now temporarily suspended in the
4 down economy. As the two gentlemen spoke, the development
5 community is waiting patiently for the cycle to turn, as
6 we all know it will.

7 And another unique factor here is the presence of
8 two large water providers both eyeing the same general
9 area, and basically, before this settlement, almost
10 destined to have continuous collisions over the coming
11 years. And the loser there is the public interest, and
12 the winner in adopting the settlement agreement and
13 approving the planning areas is in the public interest and
14 the consumer of services when all is said and done.
15 Although there are several winners, that include the
16 governing municipalities -- Maricopa, Casa Grande, the
17 Ak-Chin Indian Reservation, the other Indian communities
18 that have been aware of this and that have either formally
19 endorsed it or have not chose to intervene in opposition.

20 So the principal issues you will hear unfolding
21 and you have seen in the prefiled testimony are, first, an
22 analysis and approval of the settlement agreement. And
23 you will hear Mr. Garfield, and you have seen Mr. Garfield
24 in his prefiled testimony, address that.

25 The settlement agreement itself is Exhibit WMG-3.

1 Your Honor is already familiar with that. You will hear
2 the advantages of approving that settlement agreement and
3 the reasons for approving it, not just acknowledging it
4 and laying it in the docket, the message that it sends to
5 the other utility community and to the developer community
6 and to the municipalities and counties and Indian
7 reservations out there that the Commission is being
8 proactive and modern in its approach in not only, as all
9 regulatory agencies do and as all adjudicative offices do,
10 trying to promote settlement at every turn, but here
11 rewarding the parties who went to the effort to settle
12 with a specific acknowledgement and adoption of the
13 settlement agreement.

14 The advantages of the agreement are obvious.
15 It's based on logical and supportive geographic
16 boundaries. It's based on a line. That was a concept
17 that has been mentioned, as the evidence shows, as was
18 initially promoted by the Staff. It underscores and
19 promotes the expanded use of reclaimed water. It
20 represents an unprecedented degree and coordination
21 between Arizona Water and Global, the exact opposite of
22 the tone and content of these pleadings that I summarized
23 in both of the complaint cases and the CC&N cases from the
24 '06 and '07 time frame.

25 And it basically signals a shift of resources

1 away from litigating differences and living on edge with
2 each other to expanding water conservation efforts and
3 water production and water delivery efforts to drive --
4 sustain uses of groundwater and to address the other water
5 issues that have been important to this Commission.

6 Of course, there is tremendous benefits not only
7 to the utilities but to the Staff time. And you will
8 recall -- again, not to pile on Staff here too much --
9 many of the procedural orders were very fairly directed at
10 Staff's request to give them more time to analyze the
11 papers that were being filed on them with all of these
12 filings. These were very challenging cases, both the
13 complaint matter and the CC&N application matters, and to
14 take these papers in one fail swoop and swoop them into
15 the waste can and not having to deal with them in terms of
16 an adversarial proceeding is a tremendous benefit to the
17 Staff and to the Commission and therefore the public. It
18 revolved the Francisco Grande and CP Water issues.

19 We note, and this morning confirms it, there are
20 no objections to the proposals that include formally
21 adopting and approving the settlement agreement and
22 adopting and approving the planning areas and granting
23 both the certificates applied for by any intervenors or by
24 any members of the public, the two who were here to
25 support the application. There has been enthusiastic

1 endorsement, as I mentioned the record shows, by the
2 governmental partners involved in this region. And you
3 read and you will hear a bit from Mr. Garfield on this
4 point.

5 So this is a historic moment, and it calls for
6 historic measures. And obviously the applicants here will
7 be arguing to you that although it historically has not
8 been done that the Commission approves a settlement
9 agreement or adopts a planning area, but now is the time
10 to do it given the uniqueness of the procedural background
11 of this case, the geographic area involved, and the size
12 of these parties coming together in that relatively narrow
13 geographic area.

14 The second issue after the settlement agreement
15 that you will hear addressed in the evidence, Judge Nodes,
16 is an analysis and approval of the planning areas
17 themselves. Here from Arizona Water's perspective, both
18 Bill Garfield and Fred Schneider will address this.

19 You will see evidence -- the Commission is
20 already fairly well familiar with it -- of Arizona Water's
21 Pinal Valley Master Plan. FKS-1 is a former version of
22 that plan. FKS-3 actually inadvertently was an old map
23 that was prefiled. When Mr. Schneider is on the stand we
24 will correct that with an updated reported and an updated
25 map to reflect the settlement agreement and planning that

1 has been done since the settlement.

2 You have already seen the evidence and will hear
3 argument from the parties after the proceeding that the
4 planning areas are consistent with good engineering and
5 public policy and all the reasons that go behind that.
6 It's not only related to Arizona Water Company and their
7 need to plan and provide for their Casa Grande area, their
8 Stanfield area, tying into the east of Coolidge and to the
9 west beyond and around Stanfield, but, of course,
10 coordination with Global from a planning perspective so
11 the developers and the builders and ultimately the
12 customers have some certainty that they will not get
13 involved in a tug-of-war every time they come in and ask
14 for water. And I should say some degree of certainty
15 because a planning area, as the evidence will show you, is
16 not a request for certificate. It's merely a laying down
17 of arms between the two applying parties before you so the
18 developers have the comfort of knowing that that is not
19 going to be an issue.

20 So it's really beneficial to the entire area of
21 Western Pinal County to adopt the planning area. And it
22 provides that degree of certainty to governments, to
23 tribes, and the community members, such as developers and
24 builders and customers both presently and in the future.

25 Again, we are looking to the future, not just resolving

1 the fights of the last three-plus years.

2 And importantly it's been more than a year now
3 since the settlement agreement and the planning areas were
4 docketed, and there has been absolutely no opposition or
5 intervention and opposition by any of the parties I have
6 mentioned.

7 So as with the settlement agreement the parties
8 here are going to present to you facts and then argue that
9 compelling reasons exist to break from tradition at this
10 Commission. And just as these utilities have done, to
11 break out of the old and get into the new and to not only
12 analyze and adopt this particular planning area but to
13 embrace it as good water and utility policy under the
14 unique circumstances presented in this case.

15 The third and final issue in this overview is the
16 grant of the CC&N areas as requested. And this will be
17 the more traditional part of these proceedings. You will
18 hear from both Bill Garfield and Fred Schneider on that
19 point and I know Mr. Symmonds for Global and Staff's input
20 more in the general outline and frame of a standard CC&N
21 proceeding.

22 You will hear the traditional evidence concerning
23 the breadth and depth of Arizona Water's 50-year-plus
24 track record in this area. You have seen it already in
25 the prefiled testimony, and I won't dwell on it. I think

1 there is agreement and the Staff's report confirms that
2 there is no question of readiness, willingness, and
3 ability to serve on all the fronts, the compliance fronts
4 and the financing fronts.

5 The issue here, and one that I imagine I will be
6 addressing as well post-hearing, is request for service.
7 That is the important policy debate that will be suggested
8 by the filings before you in this case and the testimony
9 that will unfold over the next couple days.

10 We will present to you an updated package of the
11 current written requests. And Mr. Garfield yet this
12 morning will show you through a map, Applicant A-3, the
13 current status of requests for service in the Arizona
14 Water Company area, just as Global will in their area.
15 And you will see that not every square foot applied for
16 has aligned request for service.

17 I won't take the time now to dwell on the factors
18 that Staff has acknowledged are important in determining
19 whether or not to include an area in a requested CC&N
20 where there has been no request for service, but they
21 include matters such as operational efficiencies, whether
22 there is a competing application in the area, whether the
23 area is contiguous to the company's current service
24 territory, whether the company is financially sound,
25 whether the requested area squares off service territory,

1 whether it fills in holes in the service territory, the
2 general status of compliance with Commission decisions and
3 other regulatory issues, and, of course, the overarching
4 concern of public interest.

5 So you will hear testimony showing that under
6 these circumstances, especially given a lot of the
7 fractionalized ownerships in the area, that the efforts
8 promoted from Staff to get updated requests for services
9 have resulted in a substantial amount of such requests.
10 Under the circumstance, when weighing the factors, suggest
11 that Arizona Water should get all of its area requested
12 even where it doesn't have request for service in that
13 area. Engineering and policy reasons strongly support
14 that, and Mr. Schneider has and will testify in more
15 detail here about those factors.

16 Staff has a couple of observations on this.
17 Hopefully some of those have been mitigated with the
18 success of the amount of both prior requests for service
19 that have been confirmed as well as written services
20 received, and we will go over that legend with you in the
21 lower right and present you with an updated map and
22 evidence.

23 There is an issue of whether written requests for
24 wastewater service must be literally received and married
25 up with a written request for water service in order to

1 grant a water certificate. As you have seen in the
2 rebuttal testimony, Arizona Water's position -- I think
3 it's joined in by Global -- is that that is unprecedented
4 and is unwise and is too high of a hurdle and hurts the
5 public interest in terms of the provision of water service
6 through a CC&N.

7 You will hear some supplemental live testimony
8 from Mr. Garfield, since this has come up largely in the
9 Staff report and in rebuttal, outlining the differences
10 between wastewater planning and Section 208 of the Clean
11 Water Act and the fact that if you add Casa Grande's sewer
12 planning area to the existing 208 area of Global
13 Wastewater Utility there is almost a perfect marrying up
14 of the two areas, and it covers virtually all of Arizona
15 Water's requested CC&N area.

16 So the evidence will show that that particular
17 request is not well founded and that there is plenty of
18 certainty and planning if the wastewater arena, which in
19 this instance is handled by the Central Arizona
20 Association of Governments under the auspices of the Clean
21 Water Act. And these planning areas are, for wastewater
22 purposes, done on a regional basis and are in place and
23 are set basically taking the place of a written request
24 for wastewater service.

25 We also do not read the proposed rule in

1 14-2-402(b) the way the Staff reads it in terms of
2 requests for service, which will be a mixed question of
3 fact and public policy discussion before you.

4 So in conclusion, when we get into the briefing
5 stage, certainly Arizona Water and Global, as well, will
6 be asking for approval of the settlement agreement that
7 has been docketed, the approval of the adoption of the
8 planning areas that are set forth in that settlement
9 agreement, and granting a CC&N for the provision of water
10 service for the area applied for by, in our case, Arizona
11 Water.

12 Thank you.

13 ACALJ NODES: Thank you, Mr. Hirsch.

14 Mr. Sabo?

15 MR. SABO: Yes, Your Honor. Good morning.

16 Before I begin my opening statement, I believe there is
17 another person here for public comment, if you would like
18 to jump to that.

19 ACALJ NODES: Sure. I would be happy to.

20 Yes, we have an additional person here for public
21 comment?

22 MS. CHENEY: Good morning. My name is
23 Linda Cheney. I'm with Eldorado Holdings, and we manage
24 five properties in the Stanfield area that happen to be an
25 overlap area. And we had originally thought that we were

1 going to receive water and wastewater service from Global.
2 Our request was that way. But I understand that the
3 settlement agreement now and in this overlapped area
4 having water to be served by Arizona Water and Global for
5 wastewater.

6 We are the entity that submitted a request on
7 Friday requesting from Arizona Water that we receive water
8 service from them. We had already submitted letters to
9 Global regarding the wastewater service.

10 And really my point in this is, I read through
11 the settlement agreement. I think that it has some voids
12 in how the reclaimed water part of the settlement is going
13 to occur, and we would encourage you to get more questions
14 answered regarding that. If Global is selling or Palo
15 Verde Utility is selling wastewater or reclaimed water to
16 Arizona Water in bulk, what does it mean to the properties
17 then as they develop? Is there a markup on that? Is
18 Arizona Water going to bring the reclaimed lines to the
19 properties or is that going to be the property owners'
20 responsibility?

21 We also encourage Arizona Water to look at
22 obtaining designation for the Stanfield area so that it's
23 consolidated and the individual certificates of assured
24 water supply don't have to be obtained by the property
25 owners on an individual basis.

1 ACALJ NODES: Okay. And so I guess as it stands,
2 you don't have a problem with two different entities
3 providing service, at least at this point in time?

4 MS. CHENEY: At this point with the settlement
5 agreement, we understand it. We would have desired to
6 have it one entity, and that be Global, but we understand
7 the settlement agreement and the three years that have
8 gone on and we are okay with receiving water from Arizona
9 Water and then the wastewater from Global.

10 ACALJ NODES: Okay. Thank you very much.

11 MR. SABO: Thank you, Your Honor.

12 As Mr. Hirsch noted, it's been a long journey to
13 get here, and the settlement agreement that is before you
14 will revolve several protracted and heavily-litigated
15 dockets. I do think there is a lot of public benefit to
16 do that.

17 I would say we are in 100 percent agreement with
18 Arizona Water and really we are in fairly substantial
19 agreement on a lot of points with Staff, and I wanted to
20 highlight some of those points.

21 For example, it appears that all parties are in
22 agreement that Arizona Water and Global, that Global
23 utilities are fit and proper entities to receive CC&Ns for
24 the areas in question, that approval or at least that
25 resolution of these cases under the settlement agreement

1 would result in saving of time for all parties, including
2 the Commission, as well as substantial resources of all
3 the parties. In addition the settlement agreement has
4 been supported by numerous community leaders -- the City
5 of Maricopa, the City of Casa Grande, and Pinal County --
6 as detailed extensively in Mr. Garfield's testimony.

7 A key and really innovative feature on this
8 settlement agreement is the agreement by Global Water/Palo
9 Verde Utilities Company to sell on a bulk basis recycled
10 water to Arizona Water in these overlap area and then
11 Arizona Water can distribute that to its customers
12 throughout those areas. We think this is an important
13 step forward. Certainly I think we have all heard some of
14 the commissioners being critical of Arizona Water for not
15 doing enough with recycled water, and here Arizona Water
16 has responded to that criticism.

17 They have entered into this agreement. This will
18 be a big step forward for them in advancing the use of
19 recycled water, and I think that is very important because
20 Arizona Water is and will continue to be one of the
21 largest water utilities in the state and getting a
22 positive experience for them on these recycled water
23 issues, I think, is a very important step forward for the
24 Commission and for the state.

25 We are working to address the concerns that Staff

1 has raised by recycled water provision. In particular
2 it's our position, as addresses in Mr. Symmonds' rebuttal
3 testimony, that this requirement or limitation on the sale
4 of recycled water would only apply -- would not apply to
5 the entire planning area of Arizona Water; it should be
6 limited to just the CC&N areas granted to Arizona Water.
7 Hopefully that will partly address the concerns that Staff
8 has raised about that provision.

9 Another area of issue in dispute involves the
10 approval of planning areas. And like Arizona Water we
11 recognize that this is something the Commission has not
12 done before, but we do believe that there are good reasons
13 to break from tradition and consider doing so in this
14 case.

15 We note that the planning areas that the parties
16 negotiated were aspired by the previous Staff report in
17 this case in the Kortsen Road sort of a dividing line --
18 was an important dividing line from that Staff report that
19 was carried over in large part in the planning areas that
20 the parties agreed to, and then that line was then
21 modified in various ways to reflect on-ground realities
22 between the two utilities.

23 And we are very supportive and happy with the
24 planning areas under the settlement that we have received,
25 and we think that they are appropriate and rational

1 planning areas for these two neighboring utilities. And
2 proving a line in the sand between these two utilities
3 will greatly, greatly reduce what was shaping up to be
4 potentially a decade of contested CC&N case after
5 contested case after contested case in this area.

6 Both Arizona Water and Global have recently
7 stated that the planning areas should and will not have
8 any impact on third parties, and we are very strong in
9 that position. And we certainly would support if the
10 Commission were to consider approval of the planning
11 areas, we think it would be appropriate for the Commission
12 to include an ordering paragraph or other statement
13 exactly to that effect, that other utilities or other
14 parties would not be bound by this; it would be just
15 binding between Arizona Water and the Global utilities.

16 The other issue that is in dispute in this case
17 involves the extent to which the CC&N should be extended.
18 All parties agree that there should be some extensions.
19 There is a disagreement between the applicants and Staff
20 as to the extent of the extensions.

21 Staff has requested and recommended that in a
22 case where a utility is requesting an extension for only
23 one type of service -- for example, wastewater service --
24 that nevertheless both requests for service for both water
25 and wastewater should be required. We call this sort of a

1 double-request requirement. As Mr. Hirsch noted, such a
2 requirement is not -- is without precedent in Commission
3 proceedings. This would be a new policy for the
4 Commission, and we don't support adopting this new policy
5 at this time.

6 The other CC&N issue that is somewhat in dispute
7 is Staff has requested and Global has essentially provided
8 renewed requests for service. This is a second request
9 for service. Originally Global provided 100 percent --
10 request for service for 100 percent of the extension area.
11 Now Global has recently gone back and obtained a second
12 request or an updated request for more than 80 percent of
13 the extension area in this case.

14 That exceeds the 71 percent of renewed requests
15 that was discussed in the recent Commission decision,
16 Decision No. 7381. And in that order, which is the only
17 order that I'm aware of that has addressed this renewed
18 request for service concept, the Commission looked at a
19 case where Global was able to provide renewed or second
20 requests for 71 percent of the extension area, and they
21 said that that was sufficient, not just to grant that
22 71 percent area, but the entire 100 percent of the
23 proposed extension area. We think that the Commission
24 should follow that precedent here in this case.

25 Your Honor, that concludes my opening statement.

1 Thank you.

2 ACALJ NODES: Thank you, Mr. Sabo.

3 Mr. Hains?

4 MR. HAINS: Thank you, Your Honor.

5 Over the three and a half years since Global
6 filed the initial request for CC&N in this docket there
7 have been a number of evolving circumstances. Arizona
8 Water has intervened and variously objected to the
9 application, made its own application, filed a complaint
10 against Global, and finally reached a settlement with
11 Global. Along the way Staff has offered recommendations
12 in Staff reports at two points, once before and once after
13 the settlement.

14 In the first Staff report Staff provided three
15 alternative recommendations as ways in which the competing
16 applications between Arizona Water and Global could be
17 revolved reasonably. The first recommendation granted
18 each application only to the extent that requests for
19 service were present for the specific parcel to the
20 respective applicant.

21 The second alternative would have granted Arizona
22 Water approval for all areas contiguous to its existing
23 CC&N for which there was a request for service for either
24 applicant. The final alternative would have drawn a line
25 through the requested extension area and granted each

1 applicant a geographic half of the extension area.

2 The last alternative has been adopted by Global
3 and Arizona Water as part of the basis for the settlement
4 agreement they reached. Following Staff's evaluation of
5 the settlement agreement, Staff believes that the
6 appropriate recommendation would be that each utility
7 receive a CC&N only for areas where they possess request
8 for service for both water and wastewater.

9 In addition Staff is recommending against the
10 approval of the planning areas agreed to in the settlement
11 agreement. As explained in Ms. Linda Jaress' prefiled
12 testimony, there are administrative benefits presented by
13 the agreement for sure; however, Staff has concerns
14 regarding provisions that, as Mr. Sabo alluded to, that
15 potentially constrain the ability of Global to sell
16 reclaimed water in areas within Arizona Water's planning
17 area. Moreover, Ms. Jaress described concerns Staff has
18 with approving the planning areas contemplated by the
19 settlement agreement.

20 Other changes have occurred since the original
21 application in addition to the settlement disputes.
22 Global has acquired the Francisco Grande and CP Water
23 systems and is requesting approval of the transfer of CC&N
24 to Global from these systems. Further, the pace of growth
25 in the area has changed substantially since the original

1 application was made.

2 As Ms. Jaress explained, this has had an impact
3 on the financial health of Global; however, based on
4 Staff's review Global remains qualified to receive the
5 requested CC&N extension.

6 As the testimony of Staff's additional witnesses,
7 engineers Ms. Dorothy Hains and Mr. Marlin Scott, Jr. will
8 describe, Staff has concluded that both Arizona Water and
9 Global have the technical ability to serve their
10 respectively requested extension areas.

11 Finally, Staff will be presenting the testimony
12 of Mr. Bob Gray in support of Staff's ultimate
13 recommendations concerning what portions of the requested
14 extension areas should be granted to the applicants.

15 One final note, because of a schedule difficulty
16 that has been alluded to previously, Staff will be
17 presenting Ms. Linda Jaress first, and I believe that all
18 the parties are in agreement with allowing her to be taken
19 out of turn. And with that, I conclude my opening.

20 ACALJ NODES: Okay. And, Mr. Sabo and
21 Mr. Hirsch, you are okay with Ms. Jaress taking the stand
22 first in this proceeding?

23 MR. SABO: Yes, Your Honor.

24 MR. HIRSCH: That is fine with us. Today is your
25 constraint, Linda.

1 We might as well let her go first. That's fine.

2 ACALJ NODES: Okay. All right. Well, then, I
3 guess, Mr. Hains.

4 MR. HAINS: Thank you. Staff would like to call
5 and have sworn Ms. Linda Jaress.

6

7

LINDA JARESS,

8 called as a witness herein, appearing on behalf of Staff,
9 having been first duly sworn, was examined and testified
10 as follows:

11

12

DIRECT EXAMINATION

13

14 BY MR. HAINS:

15 Q. Good morning, Ms. Jaress. How are you today?

16 A. Okay.

17 Q. Could I please have you give your full name and
18 place of business for the record.

19 A. My name is Linda Jaress. My business address is
20 1200 West Washington, Phoenix, Arizona.

21 Q. And by whom are you employed and in what
22 capacity?

23 A. I'm an Executive Consultant III for the Arizona
24 Corporation Commission.

25 Q. And could you briefly describe your duties in

1 that capacity?

2 A. I do special projects for the director.

3 Q. Okay. And in the course of your duties were you
4 assigned to evaluate the present application?

5 A. Yes.

6 Q. Okay. And could you describe what aspects of the
7 application were your responsibilities?

8 A. Well, ultimately my responsibility was to review
9 the settlement agreement and the financial health of the
10 two applicants.

11 Q. Okay. Do you have up there what has been marked
12 for purposes of identification as Exhibit S-2?

13 A. Yes.

14 Q. Okay. Can you please describe that and identify
15 that for the record.

16 A. S-2 is my testimony and Staff report filed
17 April 10th, 2009.

18 Q. Thank you.

19 And was that prepared by you or under your
20 direction?

21 A. Yes.

22 Q. And if I asked the same questions that are posed
23 inside the testimony, would your responses be the same
24 today?

25 A. Yes.

1 Q. Do you have any changes, modifications or other
2 alterations to make to the Staff report at this time, to
3 Exhibit S-2?

4 A. No.

5 Q. Okay. Could I please briefly have you summarize
6 your testimony in the Staff report at this time?

7 A. Briefly I recommended that the Commission not
8 approve the settlement agreement and not approve the
9 planning areas, and I list several reasons why.

10 I was also concerned about part of the settlement
11 agreement relating to the provision of reclaimed water in
12 Arizona Water's planning area.

13 Q. I see, and thank you.

14 With that do you adopt Exhibit S-2 as your sworn
15 testimony here today?

16 A. Yes.

17 MR. HAINS: At this time I would like to move for
18 the admission of Exhibit S-2.

19 ACALJ NODES: Any objection?

20 MR. SABO: No objection.

21 MR. HIRSCH: No.

22 ACALJ NODES: Okay. S-2 is admitted.

23 (S-2 was admitted.)

24 MR. HAINS: Thank you. And with that Ms. Jaress
25 is available for questions.

1 ACALJ NODES: All right. Mr. Hirsch?

2 MR. HIRSCH: I'm going to defer to Mr. Sabo.

3 ACALJ NODES: Oh, that's right. Okay. Mr. Sabo.

4 MR. SABO: Thank you, Your Honor.

5

6

CROSS-EXAMINATION

7

8 BY MR. SABO:

9 Q Good morning, Ms. Jaress.

10 A Good morning.

11 Q How are you doing today?

12 A Just fine.

13 Q You mentioned the Staff report and testimony that
14 you prepared, Exhibit S-2.

15 Could you turn to page 1 of the attached Staff
16 report?

17 A I'm there.

18 Q And that is the page where you address your
19 concerns with respect to the recycled water; is that
20 correct?

21 A Yes.

22 Q Would you agree with me that historically Arizona
23 Water has not been a big promoter or user of recycled
24 water?

25 A Yes.

1 Q And do you think that therefore a provision which
2 would encourage Arizona Water to use and the represented
3 agreement by Arizona Water to use recycled water is a step
4 forward?

5 A It would be a step forward if it weren't
6 otherwise provided at a lower cost.

7 Q And would your concerns that you have expressed
8 be lessened if the provision that you referred to were
9 limited from -- currently the Arizona Water planning area
10 if it were limited to the Arizona Water CC&N area?

11 A Not necessarily. If Palo Verde is providing the
12 wastewater service and then selling the reclaimed water to
13 Arizona Water for Arizona Water to sell, that arrangement
14 may result in a higher cost to the user, to the consumer,
15 than if Palo Verde sold it directly.

16 Q Now, I'm kind of wondering what you are basing
17 that on.

18 Have you reviewed any cost studies from Arizona
19 Water or Global that would show the cost of one or the
20 other providing the service?

21 A No, I haven't.

22 Q Could you turn to page 2 of that settlement
23 agreement or that Staff report rather?

24 A Okay.

25 Q And at the beginning of that page you address a

1 number of benefits or potential benefits of approving the
2 planning area such as increasing the confidence and the
3 enforceability of the planning area, reducing future
4 disagreements, and supporting long-term planning.

5 Are those accurate benefits?

6 A. Yes.

7 Q. And then later on on that page you address some
8 of your concerns. One of those was an implicit
9 reservation of service areas. I want to talk a little bit
10 about that.

11 You have, I think, heard the parties repeatedly
12 represent that the planning areas would and should have no
13 impact on third parties; is that correct?

14 A. Yes.

15 Q. And would you have any objection to the
16 Commission including in its order an explicit statement
17 saying that there is no impact to third parties and no
18 implicit reservation?

19 A. No, I would have no objection to that.

20 Q. Are you familiar with Robson communities and the
21 utilities that they own generally?

22 A. Yes.

23 Q. And are you aware that Robson has a utility off
24 to the west of this area that we are talking about here
25 today called Santa Rosa Utility Company?

1 A. No, but --

2 Q. You will take my word for it?

3 A. I will take your word for it.

4 Q. Okay. Would you agree with me that in other
5 cases Robson has not been shy about asserting its interest
6 in CC&N cases if it has concerns?

7 A. That's true.

8 Q. Now, on page 2 you note that in your opinion
9 approval of the settlement agreement is not needed. I
10 just wanted to clarify what you mean by that.

11 Is it the case that in your view the Commission
12 doesn't need to approve the agreement but that there would
13 be no problem and no concern with the -- from Staff's
14 standpoint if Arizona Water and Global were to privately
15 abide by the line that is represented in the planning
16 areas?

17 A. I agree with that statement.

18 Q. And also on page 2 you have a comment that a
19 potential concern is in the future Global or Arizona Water
20 could evolve into companies which are no longer fit and
21 proper to provide service in new areas.

22 Can I draw from that comment that you believe
23 currently Arizona Water and Global are fit and proper
24 entities?

25 A. Yes.

1 MR. SABO: Thank you, Your Honor. That is all
2 the questions I have for Ms. Jaress.

3 ACALJ NODES: Okay. Mr. Hirsch?

4 MR. HIRSCH: Thank you.

5

6 CROSS-EXAMINATION

7

8 BY MR. HIRSCH:

9 Q. Good morning, Linda.

10 A. Good morning.

11 ACALJ NODES: And could you pull the microphone
12 over.

13 MR. HIRSCH: Not only that, but I was coughing
14 and I had it off.

15 ACALJ NODES: Thank you.

16

17 BY MR. HIRSCH:

18 Q. I just have a few questions, but let me follow up
19 on some of Mr. Sabo's.

20 First, on some of the areas about which there are
21 likely no dispute here, I just want to confirm that you
22 have no doubts having analyzed the financial health of
23 Arizona Water, that it, from a financial health
24 perspective, is in good financial health and capable of
25 providing service in the area requested; is that correct?

1 A. That's correct.

2 Q. And you reached the opinion on behalf of Staff
3 that Arizona Water Company's financial health is no cause
4 for concern for purposes of the pending application;
5 correct?

6 A. Yes.

7 Q. In regards to the settlement agreement, I read
8 your report as agreeing that a settlement agreement such
9 as the one that has been reached here does reduce the
10 drain on management time for both companies?

11 A. Yes.

12 Q. And that it reduces the legal costs that would be
13 incurred by both companies if they were continuing their
14 adversarial ways?

15 A. Yes.

16 Q. And that the Commission approval of the
17 settlement agreement or a settlement agreement such as
18 this would instill more confidence among utilities in the
19 future about the enforceability of such an agreement?

20 A. Yes.

21 Q. So if the Commission adopted a policy in isolated
22 instances and unique circumstances, such as this, a side
23 benefit of that would be the utility community would
24 realize that there was now an option of having
25 Commission-specific approval of a settlement agreement

1 that would then allow them to guide their planning and
2 future destiny.

3 Is that fair enough?

4 A. Could you repeat that?

5 Q. Sure. It was a little convoluted. I'm sorry
6 about that.

7 Commission approval of a settlement agreement
8 would --

9 A. Of this settlement agreement?

10 Q. Well, let's start with this settlement agreement.

11 A. Okay.

12 Q. -- certainly would have a benefit of giving
13 Global and Arizona Water increased confidence in going
14 forward in terms of the provision of their utility
15 services in the areas addressed.

16 Would you agree with that?

17 A. Yes.

18 Q. Okay. I don't think that there would be a lot of
19 debate about that.

20 My point in my poor question was going beyond
21 that to the utility community generally.

22 If the Commission were to use this as a platform
23 or blueprint for, in certain circumstances, analyzing and
24 adopting a settlement agreement, wouldn't you agree that
25 there would be circumstances where future utilities and

1 their customers would be benefited?

2 A. Well, that's the issue, is, is it beneficial for
3 the Commission to put it -- not just its fingerprint, but
4 to put its approval on an agreement that divides up
5 service territory well in advance of when service is
6 needed.

7 Q. Right. I think we have already hit on some of
8 them, and they are in the report.

9 You are not saying that there are no benefits
10 whatsoever; you are just saying there are pros and cons to
11 such a procedure. Correct?

12 A. That's correct.

13 Q. And I'm trying to identify some of the pros,
14 obviously, on behalf of Arizona Water.

15 One of them would be that it would be a message
16 to the utility community that there would be more
17 motivation for them to try to reach settlements if they
18 knew there was a potential option that the Commission was
19 going to start approving them.

20 Would you agree with that?

21 A. No, not necessarily.

22 Q. That's fair enough.

23 Would you agree that a procedure under which the
24 Commission would approve settlement agreements, not this
25 particular one but agreements like this in the future,

1 would serve to motivate the utilities to reduce their
2 level of disagreement over competing service territories?

3 A. Well, yes.

4 Q. Would Staff agree there would likely be fewer
5 disagreements between utility companies if a procedure
6 were adopted that the Commission were available to approve
7 settlement agreements?

8 A. Yes, but those agreements may not always be bad.

9 Q. Okay. You have been involved, I think, pretty
10 much since day one on the application side of this series
11 of marvelous consolidated cases here.

12 Would you agree with me, Ms. Jaress, that the
13 benefits to Staff are substantial arising from the fact
14 that Global and Arizona Water undertook the efforts to
15 settle this case?

16 A. Yes.

17 Q. Let's turn to the reclaimed -- and recycled water
18 was the term that was used -- water issue that is
19 paragraph 7 of the settlement agreement.

20 Would you agree that -- go ahead and take your
21 time to pull it out if you need it. It's on page 7.

22 A. Okay.

23 Q. Got it there?

24 A. Yes.

25 MR. HIRSCH: This, by the way, Your Honor, is --

1 at least in terms of Arizona Water's submittals is WMG-3
2 as part of Bill Garfield's direct, which has yet to be
3 moved, but will be, and it's been docketed, of course.

4 Q BY MR. HIRSCH: I will give Judge Nodes a chance
5 to catch up here.

6 We were zeroing in on the provision that talked
7 about -- I think you have it quoted in your report -- that
8 talked about the covenant by Global and Palo Verde
9 Utilities Company to only sell reclaimed water to Arizona
10 Water Company to be the provider within Arizona Water's
11 CC&N and planning area.

12 Remember generally that discussion when Mr. Sabo
13 was asking you questions?

14 A Yes.

15 Q Okay. Would you disagree that the provision
16 doesn't create any problem in areas where Arizona Water
17 company would have a CC&N for the delivery of water?

18 A It doesn't create any problem? I'm sorry.

19 Q I'm trying to draw a distinction between the term
20 of the settlement agreement that talks about reclaimed
21 water being sold and delivered within a CC&N area and a
22 planning area. So I'm trying to break that into its
23 component parts.

24 A Okay.

25 Q So is it your view that there is a problem with

1 this provision as it relates purely to focusing on the
2 CC&N area as opposed to the planning area?

3 A. Well, there is still a problem there where you
4 would have the Commission approve a plan where Palo Verde
5 and Arizona Water decide who is going to sell Palo Verde's
6 reclaimed water.

7 Q. Okay. Let me ask it this way.

8 Even within the CC&N area Staff has a problem?

9 A. Yes.

10 Q. Okay. That is what I was trying to get to.

11 Have you been aware of instances before where
12 utilities have gotten into a dispute over the service of
13 reclaimed water within a potable water CC&N?

14 A. I think years ago Arizona Water did. There was a
15 problem -- I don't know -- in the far East Valley, like
16 out by Gold Canyon. It's been a long time, but I know
17 there was one problem. It may have been a lawsuit.

18 Q. Right. I will tell you I'm aware of actually
19 disputes and some of which have arisen to lawsuits over
20 whether or not, depending on the quality of the grade of
21 the reclaimed water, which gets better and better over
22 time, whether or not at some point that rises to a level
23 of an impermissible competition within an area where a
24 party has an CC&N water certificate.

25 You generally familiar with that issue happening

1 out there?

2 A. Yes.

3 Q. Okay. My point is, without having you subscribe
4 to the degree of controversy out there, the fact is that
5 it's a potential area for dispute, is it not?

6 A. Yes.

7 Q. And the water certificate holder would not like a
8 competing noncertificated provider coming in and poaching
9 on its certificate by selling reclaimed water to its
10 potable water customers.

11 Would you agree with that?

12 A. Yes.

13 Q. And here to the extent Global and Arizona Water
14 have agreed in paragraph 7A not to do that, would you
15 agree that, at least as it relates to the two of them,
16 that's -- one of the pros of that is that it eliminates an
17 agreement -- a disagreement between them now and in the
18 future; correct?

19 A. Yes, but the elimination of a potential
20 disagreement may not always be in the public interest.

21 Q. I understand that.

22 And I think I heard you tell Mr. Sabo, you
23 have -- you or Staff have not undertaken a cost analysis
24 of the impact of the water being wheeled through Arizona
25 Water Company as opposed to -- reclaimed water directly

1 delivered by Palo Verde?

2 A. That's correct.

3 Q. And are you aware of any proposed tariff or
4 consideration of the tariffs that are underway of Arizona
5 Water for the wheeling of reclaimed water within its CC&N
6 area?

7 A. No.

8 Q. Now, a couple questions in the planning area, and
9 then we will generally be done.

10 You are not saying that the Staff and the
11 Commission do not favor long-term planning in general, are
12 you?

13 A. That's correct. I do not favor -- I'm not
14 against long-term planning.

15 Q. And you are aware that perhaps the highest
16 motivation and the culmination point of a process of
17 long-term planning would be the formal adoption of a
18 planning area?

19 A. Yes.

20 Q. And you are aware that, for example, in land use
21 and zoning, such as the growing smarter series of statutes
22 that have been adopted, our system of laws on that side,
23 granted not related directly to utility practice, but that
24 area promotes the use of specific planning areas, for
25 example, by a municipality; correct?

1 A. Yes.

2 Q. And in your practice with Staff and in your
3 diligent checking of things over the years, you are
4 generally familiar with the concepts of a municipality
5 area and boundary and how that relates and how that
6 relates to the provision of utility service within those
7 areas?

8 A. Yes.

9 Q. And you would agree, at least in that
10 circumstances, public policy supports and, in fact,
11 insists on boundaries that are defined for planning areas;
12 correct?

13 A. Yes.

14 Q. Okay. At least in the land use and zoning area
15 the decision has been made that it is in the public
16 interest to, on a bright-line basis, have a line on a map
17 showing each municipality's planning area; correct?

18 A. Is it correct that municipalities have already
19 determined that that is in the public interest?

20 Q. Well, you would agree that in the land use
21 setting municipalities have planning areas; right?

22 A. Yes.

23 Q. And those lines have force of law and are
24 approved and enforced by the statutory framework; right?

25 A. I cannot answer that.

1 Q Okay. That is fair enough.

2 Would you disagree in that concept of specific
3 planning areas and boundaries is not something that is --
4 well, it is something that has been adopted in other
5 settings in Arizona; correct?

6 A Yes.

7 Q And would you agree that long-range planning --
8 and back to the utility context here, your area of
9 expertise -- long-range planning cannot really be
10 accomplished on the basis of a single individual request
11 for service?

12 A Yes.

13 Q It takes a longer term, especially in the water
14 business, a longer-term perspective of where transmission
15 lines may need to go, where water production and water
16 quality treatment systems may need to go to serve a larger
17 and more regional area generally; correct?

18 A That's correct.

19 Q And the Commission and Judge Nodes will be able
20 to determine for themselves if this is clear enough under
21 the settlement agreement, but you're not reading the
22 settlement agreement as mandating a reservation of CC&N
23 territories within the planning area, do you?

24 A Would you repeat that?

25 Q Sure. One of the observations that I took from

1 your report is that there was a concern that there was an
2 implicit carve out of future CC&N areas if it fell within
3 one of the other party's planning area.

4 Do you remember that? Am I accurately
5 characterizing the concern at least?

6 A. Yes.

7 Q. Are you reading the settlement agreement as
8 providing that the parties are trying to contract away
9 from the Corporation Commission authority the provision of
10 a CC&N within the planning area?

11 A. No, but there is -- let me give you an example.

12 Q. Okay.

13 A. On page 4 of the settlement agreement is a
14 section called "Procedures to Enforce Settlement." And
15 that's the section where the companies basically want
16 approval from the Commission. Right underneath it, "A
17 stipulated motion identifying and jointly supporting and
18 requesting Commission approval."

19 So to me that implies, we want the Commission to
20 approve this so it can be enforced. And that gets -- that
21 is where the implication comes in that the Commission has
22 approved it so other companies don't even bother coming in
23 our area.

24 Q. That is the concern I want to address.

25 If you look at paragraph 4, wouldn't you agree

1 that as it relates to the CC&N applications, all that is
2 being referred to here is resolution of the then pending
3 disputes and that each Global and Arizona Water will
4 support the other's applications as agreed?

5 A. No. It says "Approval of the amended planning
6 areas and CC&Ns applications."

7 Q. Right. Would you agree with me, Ms. Jaress, that
8 the CC&N applications under the agreement itself doesn't
9 mean future CC&N applications, it means the CC&N
10 applications as defined in the agreement and attached on
11 the list?

12 A. Yes, I agree.

13 Q. Okay. Now, no doubt the parties are avowing that
14 they will file a joint motion, which one was subsequently
15 filed that brings us here today, seeking approval of the
16 amended planning areas.

17 But as you look at paragraphs A through G as it
18 relates to CC&N applications, isn't all each of those
19 subparagraphs doing is detailing the withdrawal of the
20 then pending objections and avows of support for each
21 other's then pending applications?

22 A. Yes.

23 Q. Okay. I wanted to make sure that the Staff
24 wasn't reading paragraph 4 or any other provision of this
25 agreement as attempting to, by contract, guide or force

1 the Commission into some sort of decision as to any future
2 CC&N application.

3 There is no such provision of that in this, is
4 there?

5 A. That's correct.

6 Q. And whether that applicant would be Robson or the
7 Dwight Nodes Water Startup Company or Global or Arizona
8 Water, this agreement doesn't affect any party's right to
9 support an application and move for a CC&N even if it's
10 within one of the party's planning areas, does it?

11 A. That's correct.

12 Q. Okay. And the Commission retains its full
13 authority to weigh and either grant or deny such an
14 application even if it's within the planning area, does it
15 not?

16 A. That's correct.

17 Q. Okay. There was a reference -- and I'm almost
18 done here -- with -- a reference and a comparison drawn to
19 two electric provider, APS and TEP.

20 Do you recall that?

21 A. Yes.

22 Q. And the gist of the observation there was, hey,
23 those utilities don't have formally approved planning
24 areas and they seem to get along okay without requiring
25 Commission approval.

1 Is that the gist of your observation?

2 A. No. I don't think it was planning areas. I
3 think I was just referring to plans, how electric
4 utilities file biannual transmission assessment plans.
5 There are some -- other ten-year plans that they file, but
6 the Commission doesn't approve.

7 Q. Okay. The point I wanted to make sure was in the
8 record here for Judge Nodes or any reader of the
9 transcript here is, you are aware that the --

10 Well, first off, are you aware of any
11 circumstance where APS and TEP are fighting over the same
12 territory to provide service?

13 A. I'm not aware.

14 Q. That generally doesn't happen in the large-scale
15 electric transmission and retail service circles, does it?

16 A. Well, they have huge service territories, so they
17 fill in rather than move out -- than expand.

18 Q. And as you already noted there is both a
19 statutory and a regulatory system in place where they
20 already file biannual and ten-year plans; correct?

21 A. Yes.

22 Q. And although the Commission and the Staff from
23 time to time call on particular utilities to file
24 particular plans to address particular issues, there is no
25 parallel procedure for water utilities, is there?

1 A. Not that I know of.

2 Q. So wouldn't that suggest to you that two
3 large-scale regional water providers such as Global and
4 Arizona Water should be encouraged to get together, as the
5 larger electrical utilities are already obligated to do by
6 law, and plan for planning areas?

7 A. Whether they should be encouraged or not?

8 Q. Yes.

9 A. I think utilities -- water utilities should be
10 encouraged to do some long-term planning. I don't know
11 about getting together and carving up service territory.
12 That is a different matter.

13 Q. Okay. Getting together as municipalities do for
14 land use purposes, though, and drawing actual lines on a
15 map, you would agree at least would lend itself to some
16 certainty to some landowners, developers, builders, and
17 customers in an area going forward; does it not?

18 A. Some, yes.

19 Q. Does the Staff recognize that the City of Casa
20 Grande and the City of Coolidge support Arizona Water
21 Company's development of a regional plan?

22 A. I don't know.

23 Q. And the Staff is aware of Arizona Water Company's
24 ongoing and updated Pinal Valley Water Master Plan, is it
25 not?

1 A. Yes.

2 MR. HIRSCH: Thank you.

3 That's all I have, Your Honor.

4 ACALJ NODES: Okay. I do have questions for
5 Ms. Jaress, but I need to give our court reporter a break.
6 So we will take a ten-minute break.

7 (Whereupon, a recess was taken from 10:54 a.m.
8 until 11:07 a.m.)

9

10 EXAMINATION

11

12 BY ACALJ NODES:

13 Q. Okay. Good morning, Ms. Jaress.

14 A. Good morning.

15 Q. First, any questions related to the requests for
16 service issue, those should be addressed by Mr. Gray?

17 A. That's correct.

18 Q. Okay. Let's first talk about this sale of
19 reclaimed water issue that you address in your Staff
20 report. And there have been some questions.

21 You have expressed concern about the limitation
22 of sale of reclaimed water solely to Arizona Water; is
23 that correct?

24 A. In the CC&N or planning area.

25 Q. Right.

1 A. Yes.

2 Q. And then both Mr. Sabo and Mr. Hirsch attempted
3 to distinguish, well, would the Staff still have the same
4 concern if that provision were limited to just the CC&N
5 area of Arizona Water?

6 Do you recall those questions?

7 A. Yes, I do.

8 Q. And I believe you indicated that Staff still has
9 a concern even if there were that type of limitations;
10 correct?

11 A. Yes.

12 Q. Let me see if I can understand it fully.

13 If there were a requirement that Global -- a
14 requirement through settlement that Global sell reclaimed
15 water on a bulk basis to Arizona Water Company and it was
16 limited just within Arizona Water's CC&N area as opposed
17 to a planning area, would that not create a benefit to the
18 public in general, to the public interest, insofar as
19 Arizona Water, which historically has not had access to
20 reclaimed water in many or most instances, that at a
21 minimum they would now, under this type of arrangement,
22 have access to reclaimed water to be sold to its customers
23 by virtue of Global Water's provision -- and I guess it
24 would be Palo Verde Utilities Company?

25 That was a long convoluted question.

1 A. I have been getting used to those.

2 Q. Yes. I'm trying to lay out all the various
3 elements. I guess given the fact that Arizona Water
4 historically has not been able to sell reclaimed water,
5 because it does not do wastewater service anywhere, isn't
6 there some inherent advantage to having access to some
7 amount of reclaimed water that it would be able to sell to
8 its customers within a CC&N area?

9 A. Yes, everything else held consistent. We don't
10 know if there would be another company close by that could
11 use the reclaimed water for a huge golf course that is
12 already using groundwater. We don't know what the future
13 would bring.

14 Now, everything else held constant, if we are
15 just looking at Arizona Water and this certain service
16 territory and there is no other better use for the
17 reclaimed water than for Arizona Water to sell it to its
18 customers. But that is one of the problems with the whole
19 approving the settlement agreement issue, is everything --
20 it looks fine now, but you don't know what the future
21 holds. And for the Commission to approve the agreement
22 and the agreement have this paragraph in it, you don't
23 know what effect that will have in the future.

24 But certainly it would be a good thing for
25 Arizona Water to sell reclaimed water to its customers, as

1 long as it's at a cost that couldn't be beaten by some
2 other method by getting the reclaimed water to the
3 customers.

4 Q And I think, as Mr. Hirsch pointed out, if it's
5 within Arizona Water's CC&N area as opposed to a just a
6 planning area, there would be arguably a prohibition
7 against any other provider serving a golf course or any
8 other type of facility within that CC&N area; correct?

9 A Yes.

10 Q And so to that extent there really wouldn't be
11 any other option available to a golf course, let's say,
12 other than service being provided for reclaimed water
13 arguably again. I mean, that issue has been raised
14 several times I believe.

15 So to that effect there is advantage to the
16 public interest that Arizona Water would now have a source
17 of reclaimed water to sell?

18 A Yes.

19 Q And your concern is that, as it is with regards
20 to approval of the agreement with regard to the planning
21 areas, is that you believe that the companies, Global and
22 Arizona Water, could reach this same arrangement without
23 having the Commission's approval of the agreement and
24 still sell -- still engage in the same transaction; is
25 that right?

1 A. Yes.

2 Q. As long as Arizona Water has a tariff in effect
3 that prices -- the reclaimed water is at a certain price?

4 A. Yes.

5 Q. Okay. Let me -- let's move to this planning area
6 issue.

7 A. Okay.

8 Q. If I understand it -- and I guess we kind of
9 touched on it -- Staff's concern is not that there is some
10 agreement between the two companies with respect to
11 planning areas; it's a concern that the Commission should
12 not take on the role of expressly approving those planning
13 areas.

14 Is that right?

15 A. That's correct.

16 Q. And are you aware of any other instances in which
17 this issue has arisen and whether Staff has taken the
18 position and/or the Commission, as far as a request, to
19 approve specific planning areas that have been agreed to
20 by two utility providers?

21 A. I'm not aware of any.

22 Q. Do you recall -- I don't know if you were
23 involved in it -- the Johnson Utilities and Diversified?
24 Were you familiar with that?

25 A. I'm somewhat familiar with it.

1 Q Okay. You weren't the Staff --

2 A I think I mentioned that in my Staff report, that
3 they wanted Commission approval --

4 Q Right, I see.

5 A -- and the Commission didn't approve the planning
6 area.

7 Q Okay. And, to your knowledge, that is the only
8 prior instance where there has been a formal request for
9 approval of an agreement between two companies to -- for
10 planning purposes to carve up adjacent potential CC&N
11 areas?

12 A That's the only time I'm aware of.

13 Q And in that case, I think as you mentioned in
14 your Staff report, the Commission declined to make that
15 approval?

16 A Yes.

17 Q On that same general topic, would one concern
18 from Staff's perspective and in Staff's role as an advisor
19 or making recommendations to the Commission, if the
20 Commission -- if Staff were to recommend in this case that
21 the planning areas as provided in the settlement agreement
22 were actually approved by the Commission formally, is the
23 concern -- one concern potentially that other companies
24 could read that as a signal that they should come in and
25 seek planning areas in areas that are adjacent to their

1 CC&N area, maybe not necessarily to lock it up for future
2 purposes in the sense that they were guaranteed the CC&N,
3 but that they would at least have some more certainty for
4 purposes of their long-range planning?

5 I mean, do you think that other companies would
6 see this --

7 A. Yes.

8 Q. -- if it were to be approved as a signal?

9 A. Yes.

10 Q. And rather than actually reducing the Commission
11 workload, the potential might exist that you have a -- the
12 Commission could be inundated with water companies seeking
13 formal approval of their planning areas as a head against
14 some other future utility invading the areas adjacent to
15 their existing CC&N area?

16 A. Yes, that could happen.

17 ACALJ NODES: I think those are all the questions
18 I have for Ms. Jaress, and if there is any redirect, I
19 will allow Mr. Sabo --

20 Do you have any additional questions for
21 Ms. Jaress at this point?

22 MR. SABO: No, Your Honor.

23 ACALJ NODES: Okay. Mr. Hirsch?

24 MR. HIRSCH: Just one suggested by your last

25 question, Judge. I appreciate the chance to ask it now.

1 RECROSS-EXAMINATION

2

3 BY MR. HIRSCH:

4 Q Are you aware, Ms. Jaress, of any single instance
5 anywhere pending in the state of two competing utilities
6 both seeking an overlapping service area, such as Global
7 and Arizona Water Company did here?

8 A That is pending?

9 Q Yes, that is pending. Any such dispute anywhere?

10 A I don't know. No, I don't think so.

11 Q None that you are aware of, at least?

12 A Yes, that would be correct.

13 Q Would you disagree that if the concept of
14 approving formal planning areas was limited to such
15 circumstances that the floodgates issue that Judge Nodes
16 mentioned of every utility coming in gratuitously seeking
17 planning areas would be greatly lessened?

18 A It would be limited to what circumstance?

19 Q Just areas where there is a two competing large
20 regionally-originated service providers that are seeking
21 the same area to serve, overlapping area?

22 A So the Commission would approve the planning
23 areas -- or they would define the size, and it would have
24 to be two -- could it be three? You are saying that the
25 Commission should approve planning areas but to reduce the

1 number of companies that want an approved planning area,
2 they should limit the ability of someone to receive
3 approval of a planning area to competing companies that
4 are large? Is that what you mean?

5 Q I guess another way of stating the question is,
6 couldn't the Commission limit the concept of approving
7 planning areas to that six?

8 A They could, yes.

9 MR. HIRSCH: Okay. That is all I have.

10

11 FURTHER EXAMINATION

12

13 BY ACALJ NODES:

14 Q Well, in that same vein, Ms. Jaress, if an
15 applicant were to come in and seek a planning area and
16 there were other providers in the general vicinity, would
17 you expect that you would have intervention by those other
18 adjacent companies to try to protect their rights, such
19 that you would likely have a highly-litigated, contested
20 proceeding where otherwise there might not be one without
21 this planning area issue?

22 A That's correct.

23 ACALJ NODES: Okay. Mr. Hains, redirect?

24 MR. HAINS: Just very, very brief one.

25

REDIRECT EXAMINATION

1

2

3 BY MR. HAINS:

4

Q I think you substantially wiped out most of the
5 issues I wanted to cover, but just honing in on the
6 planning areas and the approval thereof, and the notion of
7 implicit reservation of service areas, there has been some
8 discussion about benefits to the various entities and
9 Arizona Water and Global having them and one that has been
10 mentioned that has been confidence moving forward.

11

To the extent that that may reflect a better
12 understanding of what competitive forces there may be out
13 there and in competing for CC&Ns within the planning
14 areas, is there that same degree of certainty, at least
15 accorded to these two participants in the agreement, to
16 the extent that they know that at least the other large
17 regional utilities are not going to be competing for an
18 area so long as it's within that planning area provided
19 that they are holding to the terms of their agreement?

20

A. Yes.

21

Q Okay. And so they have that regardless whether
22 the Commission approves the agreement; is that correct?

23

A. Yes.

24

Q So in terms of any other confidence moving
25 forward, would it be to the extent -- scratch that.

1 MR. HAINS: Thank you. I think that is it.

2 ACALJ NODES: Okay. Mr. Sabo, anything further?

3 MR. SABO: Sure, Your Honor, just a couple
4 questions.

5

6 RECROSS-EXAMINATION

7

8 BY MR. SABO:

9 Q On Mr. Hains' last point, which was basically, if
10 I understood it, that the parties would have the benefit
11 of this planning area regardless of whether the Commission
12 approves it or not, you reviewed the settlement agreement,
13 haven't you?

14 A Yes.

15 Q And is there a provision in the settlement
16 agreement that would -- conditions in the agreement to the
17 planning area on Commission approval of the planning area?

18 A Yes.

19 Q So it's possible that if the Commission does not
20 approve the planning area that there would be no planning
21 area, no line in the sand between these two companies?

22 A It's possible.

23 Q If that were the case, would you expect it to be
24 likely that there would be future CC&N disputes between
25 Arizona Water and Global?

1 A. If they didn't have an agreement, it's possible
2 that they would have continued disagreement over areas
3 they wanted to serve.

4 Q. And in this case we have a planning area which
5 was agreed to between the two providers; is that correct?

6 A. Yes.

7 Q. And so, you know, addressing Judge Nodes' concern
8 about potential other cases and other utilities maybe
9 trying to grab planning areas and having contentious,
10 litigious cases in the future, would those concerns be
11 limited if planning areas were only approved where the
12 entities in question had reached agreement beforehand?

13 A. Well, you could have a planning area without
14 having a disagreement with someone. You know, there are
15 all kinds of ways approval could be structured so it just
16 applied to Arizona Water and Global. But I'm recommending
17 against that.

18 MR. SABO: Thank you, Ms. Jaress. Nothing
19 further.

20

21 FURTHER EXAMINATION

22

23 BY ACALJ NODES:

24 Q. On the last issue -- or question prior to the
25 last question, if the Commission declines to approve the

1 settlement agreement with respect to the planning areas,
2 it's your -- isn't it true, at least in your opinion, that
3 presumably there was some advantage to the respective
4 companies, Global and Arizona Water, that caused them to
5 reach an agreement regarding the planning areas such that
6 even if the Commission were to decline to approve formally
7 this agreement, the parties may still see the agreement as
8 something that is advantageous to them and that they would
9 not withdraw from the agreement potentially, given those
10 perceived advantages of having an agreement?

11 A. Yes.

12 Q. Because to further -- if one or the other were to
13 withdraw from the agreement based on the Commission not
14 approving the settlement, then they would be back
15 essentially to square one as far as the issues that were
16 previously raised in the complaint and the pending CC&N
17 cases; correct?

18 A. That's correct.

19 ACALJ NODES: Okay. All right. Mr. Hirsch?

20 MR. HIRSCH: I have nothing further.

21 ACALJ NODES: Okay. Mr. Hains, anything further?

22 MR. HAINS: Nothing further. Thank you.

23 ACALJ NODES: Okay. Thank you.

24 Ms. Jaress, thank you. You are excused.

25 Okay. Mr. Hirsch, do you want to call your first

1 witness?

2 MR. HIRSCH: Thank you. Arizona Water will call
3 William Garfield.

4

5 WILLIAM M. GARFIELD,
6 called as a witness herein, appearing on behalf of Arizona
7 Water Company, having been first duly sworn, was examined
8 and testified as follows:

9

10 DIRECT EXAMINATION

11

12 BY MR. HIRSCH:

13 Q. Would you state your full name for the record.

14 A. William M. Garfield.

15 Q. And what do you do for a living, sir?

16 A. I'm the president of Arizona Water Company.

17 Q. Did you cause in these proceedings to be prepared
18 a list of direct testimony?

19 A. I did.

20 Q. We have put a stack of exhibits before you, and
21 as to the direct and prefiled, given that they are at
22 length, we did not provide copies. We assumed that folks
23 brought copies with them. If anyone needs that, let me
24 know.

25 But I will ask you, Mr. Garfield, Exhibit A-1,

1 being your prefiled direct and attached exhibits which go
2 from WMG-1 to WMG-7, is that the prefiled direct testimony
3 that you have prepared yourself in this proceeding?

4 A. Yes, it is.

5 Q. And do you subscribe to those questions and the
6 answers given to those questions as if we were asking them
7 here in the live hearing today?

8 A. I do.

9 Q. Do you have any corrections or -- we will have
10 some supplements, but do you have any corrections to the
11 testimony as it exists in Exhibit A-1?

12 A. No, I do not.

13 Q. Later in accordance to a procedural order did you
14 review the Global direct submittal of a Staff report for
15 purposes of preparing rebuttal testimony?

16 A. I did.

17 Q. And showing you Exhibit A-2, is that a copy of
18 your rebuttal testimony and the attendant rebuttal
19 exhibits which are numbered WMG-8 through WMG-16?

20 A. Yes.

21 Q. And did you prepare that yourself and do you
22 subscribed to the answers given to those questions?

23 A. I did and I do.

24 MR. HIRSCH: With those questions, Your Honor, we
25 move A-1 and A-2 into the record.

1 ACALJ NODES: Any objections?

2 MR. HAINS: No objection.

3 ACALJ NODES: Okay. A-1 and A-2 are admitted.

4 (A-1 and A-2 were admitted.)

5 Q BY MR. HIRSCH: Now, one of the areas,
6 Mr. Garfield, that is a moving target is the status of
7 requests for service in the area for which the company has
8 applied for a certificate of convenience and necessity to
9 provide water serve.

10 Can you tell us generally what steps the company
11 took to update prior requests for service that had been
12 received and docketed way back in the initial filing of
13 the application and thereafter?

14 A Well, a couple of methods were employed through
15 mail correspondence and also through telephone calls.

16 Q And did you direct your Staff to follow up with
17 landowners in the area applied for to try to chase down
18 these requests for services?

19 A I did.

20 Q Did you cause to be prepared a map under your
21 supervision with your engineering Staff detailing the
22 current status of requests for service from the various
23 landowners in the applied for CC&N area?

24 A I did.

25 MR. HIRSCH: Judge, we are going through some

1 exhibits that I placed off to your left there, 1 and 2
2 being the testimony. So I didn't provide copies of that,
3 but will ask Mr. Garfield and counsel -- parties have been
4 provided this -- to look at Exhibit A-3.

5 Q BY MR. HIRSCH: Can you explain to us what
6 Exhibit A-3 is?

7 A Exhibit A-3 represents a map of the CC&N
8 extension area and codes through color and through
9 lettering and numbering the parcels where we had an
10 original request for service. It also shows where we
11 received verbal affirmation or update of a request for
12 service, also updated written affirmation requests for
13 service, and it shows the additional parcels that
14 requested service since the amended application was filed.

15 Q Now, have these requests both been made and then
16 been received by the company on a week-in and week-out
17 basis even since the rebuttal testimony was filed?

18 A Yes, through even last Friday afternoon.

19 Q Okay. We have blown up Exhibit A-3 to kind of
20 enable us to orient the judge to where we are talking
21 about. And it will be beneficial to look at the close-up
22 copy; that is why we provided it in the record.

23 You have a light pointer there, I believe. Can
24 you generally outline the area of the company's existing
25 or preexisting CC&N area and describe what system it's in

1 within the company's operations?

2 A. Yes, as best I can.

3 The two distinct areas out near Stanfield
4 comprise the original 16 square miles or 16 sections that
5 I'm pointing to here labeled Stanfield. It's four miles
6 north/south and four miles east/west.

7 Q. So that is an area bracketed by White and Parker
8 Road and Anderson Road respectfully to the west and the
9 east and Selma to the south and Kortsen to the north?

10 A. That's correct.

11 Q. Now, I don't see any colored indication on the
12 map or in the legend.

13 Are the requests for service portrayed on this
14 map limited to those only in the extended CC&N that has
15 been applied for?

16 A. That's correct.

17 Q. Does the company have existing plant and property
18 and/or requests for service within the Stanfield 16
19 sections?

20 A. We currently serve customers within the Stanfield
21 area, and there are a number of projects within the
22 Stanfield area that we have not shown on this map that
23 need service because they are already within our CC&N;
24 although, I believe Global/Palo Verde Utilities has
25 requests for wastewater service within our Stanfield CC&N.

1 Q So the fact that the 16 sections of Stanfield is
2 empty except for the cross-hatching showing its existing
3 certificate on Exhibit A-3 doesn't mean there is not
4 development going on in there; is that correct?

5 A That's correct.

6 Q Who generally prepared the Exhibit A-3 map?

7 A It was the company's engineering department.

8 Q And, to the best of your knowledge and oversight,
9 does it accurately track the letters that were received
10 from the particular developers?

11 A I believe that it does.

12 Q Let's get back to some of the general
13 orientation, and then I will have some specific questions.
14 You mentioned the Stanfield CC&N.

15 Where generally is the western boundary of the
16 company's existing Casa Grande CC&N area?

17 A The closest corner or portion of the Casa Grande
18 CC&N to Stanfield is approximately one mile east of the
19 southeast corner of our Stanfield CC&N. So on the map it
20 reflects a mile along Selma Highway going east from, I
21 believe it's Anderson Road, to the very western edge of
22 our Casa Grande CC&N. So they are very close.

23 Q So that parcel B holding by Arizona State Land
24 essentially shows the very small gap between the existing
25 Stanfield and Casa Grande CC&N areas?

1 A. That's correct.

2 Q. All right. And then generally outline for us the
3 western boundaries of the company's current Casa Grande
4 CC&N area -- I mean, not by roads but just with your light
5 pen so we can see that.

6 A. It's somewhat of an irregular shape, but I will
7 attempt to go from one corner to the other edge on the
8 western edge.

9 It goes along the south, back up along a mile
10 east of Anderson turning back to the east, and then
11 following up around some of the Francisco Grande area, the
12 CP Water area, and coming up into a project called Grande
13 Valley.

14 Q. Okay. Now, with reference to the two existing
15 CC&N areas that are shown, I want to point to the south,
16 and the legend shows us there is Indian reservation.

17 What Indian reservation is that?

18 A. The Tohono O'odham Nation.

19 Q. And can you generally draw your laser pointer
20 across the southern boundary of Indian reservation lands?

21 A. It would be their northern boundary, but it's
22 along our southern boundary.

23 Q. All right. And the purple line that is shown
24 along the eastern edge seems to run immediately adjoining
25 the Arizona Water Company CC&N area and planning boundary.

1 What does that demonstrate?

2 A. You are talking about this purple boundary here?

3 Q. Yes.

4 A. That represents the interface between Arizona
5 Water Company's area and Global's area.

6 Q. Okay. I want to zero in now on the area that
7 Arizona Water has applied for.

8 One of the factors that is set forth in your
9 testimony from a prior case where Staff listed nine
10 criteria that could be looked at in terms of the wisdom of
11 extending a CC&N relates to -- I'm paraphrasing -- the
12 continuity of the property and its operational tie-in to
13 its existing certificate.

14 Can you, using Exhibit A-3 and the map here,
15 generally enlighten Judge Nodes as to why the company
16 chose this particular boundary to apply for and what it
17 had to do in terms of squaring off area and providing for
18 operational efficiencies?

19 A. Well, as far as some of the factors that went
20 into the selection of what areas to look to serve and to
21 request CC&N for, one of the factors was to connect a
22 regional system from Casa Grande to Stanfield. We felt
23 there were very strong reasons to interconnect the two
24 systems as one regional water system rather than having
25 two separate water systems.

1 As far as some of the logical boundaries that
2 form the basis of our request, the southern boundary that
3 abuts against the Tohono O'odham Nation boundary made
4 logical sense to us.

5 The western boundary along one of the main
6 thoroughfares going to the north to Maricopa was the John
7 Wayne Parkway; that seemed to have some logical purpose
8 for having that delineation between our western boundary
9 and where Global would be serving perhaps in the future,
10 since that is a very major thoroughfare going into
11 Maricopa from the south.

12 The northern boundary along the existing north of
13 Stanfield and some sections immediately north and west of
14 Stanfield made sense because there was a project that was
15 partly within the Stanfield CC&N and partly outside, that
16 it made some sense to serve the entire project by the
17 company versus breaking it up into pieces, for the same
18 reason, for example, that when you look to the Legends
19 project, it made sense not to break that up between the
20 company and Santa Cruz Water Company and to keep that
21 entire project intact. And to a great extent the project
22 called Grande Valley, which is more to the
23 northern/central part of map, it made sense to let Santa
24 Cruz Water serve that entire project as well.

25 So we were trying to make a logical boundary to

1 our request and actually formed a lot of the basis for our
2 settlement discussions with Global and their
3 representatives to make some sense as to where we would
4 serve and where they would serve.

5 Q Does the application as it's been applied for
6 resolve your goal of allowing for a tie-in operationally
7 between the Casa Grande and Stanfield systems?

8 A I believe it does.

9 Q And how does it do that generally?

10 A Well, if you look at Exhibit A-3, the bridge or
11 the connection between Casa Grande and the Stanfield area
12 spans about four or five miles north/south. So it's a
13 fairly sizeable connection from our main Casa Grande
14 system to Stanfield. More than just a little sliver
15 coming through, it would make good engineering sense to
16 have that serve more than just one connection. There
17 would be multiple connections between Casa Grande and
18 Stanfield, eventually becoming one physical water system.

19 Q And does the company have plans in terms of rate
20 structure as it relates to its currently separate systems
21 in Casa Grande and Stanfield?

22 A We have a rate increase pending before the
23 Commission that doesn't go into hearing until the end of
24 August. But in that rate application we have proposed to
25 consolidate the rates of Casa Grande, Coolidge, and

1 Stanfield into one rate system. Casa Grande and Coolidge
2 have already been interconnected, and Stanfield is planned
3 for interconnection.

4 ACALJ NODES: If may interpret briefly?

5 MR. HIRSCH: Go ahead.

6 ACALJ NODES: Is the physical interconnection
7 between the Stanfield and Casa Grande systems already in
8 place, I mean, the physical main connection?

9 THE WITNESS: I guess, Judge Nodes, the
10 connection between Casa Grande and Stanfield does not
11 exist as of this date. The physical interconnection is
12 yet to be completed.

13 ACALJ NODES: Okay. And will it -- where will it
14 interconnect? Is it along this Selma Road or --

15 THE WITNESS: That is probably a better
16 engineering question for Fred Schneider.

17 ACALJ NODES: Okay.

18 THE WITNESS: But I can say generally the intent
19 is to, instead of simply serving Stanfield as a satellite
20 system and all the projects pertinent to it, that we would
21 be looking to, at the appropriate time, make an
22 interconnection to Casa Grande to bring all resources, of
23 both water resources and personnel, between the systems
24 into one.

25 ACALJ NODES: I just wondered, you know, if you

1 just look at the map it appears that the shortest span
2 between the two would be along a line that would now under
3 your agreement be Global's service territory, if you know
4 what I'm saying.

5 THE WITNESS: Well, Judge, I think you are
6 probably giving all the reasons why we initially had that
7 area within our planning area, our own internal planning
8 area, and at the time it made logical sense for us to do
9 that as well.

10 But when we were in settlement discussions with
11 Global, they made some very strong points about why it
12 made sense for them to serve that entire project, and we
13 were swayed by that argument and agreed with that.

14 ACALJ NODES: Okay.

15 THE WITNESS: In the context of the settlement,
16 which, you know, is a compromise.

17 ACALJ NODES: I understand that. I was just
18 trying to understand the physical connection. It looks
19 like probably it's going to drop down further south now
20 than it might have otherwise been absent this agreement.

21 THE WITNESS: That's correct. Although, I don't
22 believe there will be any loss of efficiency because we
23 will also be serving other projects along the
24 interconnection route as well.

25 ACALJ NODES: Okay. Thank you.

1 MR. HIRSCH: And I might encourage you, Judge
2 Nodes, at any time to break in; especially in a
3 circumstance with prefiled testimony like this, that is
4 helpful for the parties.

5 Q BY MR. HIRSCH: Mr. Garfield, a little bit of
6 elaboration that is not in the prefiled concerning the
7 time involved, can you give Judge Nodes an idea of the
8 intensity of the discussions, over how many weeks and
9 months they went forth between you and your management and
10 representatives and the Global management representatives
11 that led to that purple line of demarcation that we see on
12 the exhibit?

13 A It seemed like many months, Mr. Hirsch. They
14 were very intense. We had regular settlement meetings
15 with a number of the Global representatives, including
16 some of the principals of the company. They were very
17 much in depth about what they had plans for, what they
18 already made commitments to, what facilities were already
19 constructed. And so those were very in-depth discussions
20 and very contentious at times.

21 But ultimately there was a desire on the part of
22 both parties to reach settlement and to find some way to
23 resolve our differences, because I think we all felt it
24 was better for both of us to settle our differences rather
25 than to continually fight.

1 Q. Can you, with a mind toward the questions and
2 answers that arose during Ms. Jaress' testimony -- we are
3 probably at the point of your testimony where it would be
4 helpful to get your insights, in addition to what you have
5 in your prefiled, concerning the concept of approving a
6 settlement agreement under the unique circumstances of
7 this case.

8 What about this case makes it incumbent upon the
9 Commission to break with tradition and actually review and
10 approve a settlement agreement of this nature?

11 A. I think in a number of ways this settlement
12 agreement is probably more far reaching than perhaps some
13 of the earlier settlements or planning areas that were
14 talked about in the Johnson Utilities case, where there
15 was relatively small quantities of land that were in
16 dispute.

17 This disagreement that we had between Global and
18 Arizona Water Company was of such a magnitude that it was
19 affecting and concerning cities. The City of Casa Grande
20 had serious concerns about this. They encouraged us to
21 settle and to find ways at settling our differences as
22 well. I met with the mayor of Maricopa. He was
23 encouraged by the fact that we had reached settlement, was
24 aware of the terms of the settlement, and was very
25 encouraged about that as well.

1 We also received a number of telephone calls -- I
2 personally received a number of them -- from developers
3 who were concerned about the uncertainty of water and
4 wastewater service in those areas. And they were
5 encouraging us to settle with Global as well.

6 And I assume Global was receiving similar calls
7 on their end encouraging us to reach a settlement.

8 I just think that the -- not to use the term
9 global -- but this global solution to this fairly large
10 region of Pinal County was important to the communities,
11 to the developers, and to the water providers and
12 wastewater providers for reaching a resolution.

13 So I think just because of the depth and the area
14 that it impacts, I think it merits Commission review and
15 approval.

16 Q Turning to the question -- and I won't elaborate
17 further because there is a lot of testimony on that
18 point -- but turning to the question of planning areas,
19 can you address the concern that was raised in the
20 questioning of the Commission potentially inadvertently
21 opening floodgates or motivating present utilities to have
22 a mad rush to start staking out territory by way of
23 planning areas if the planning area that has been
24 submitted in this proceeding is approved?

25 A I don't really see that there will be a

1 floodgate. Will there be entities that will want to
2 formally put forth a planning area? Perhaps.

3 To the extent that utilities do prepare and
4 actually plan more than they have, I think that would
5 benefit the public.

6 I agree with Ms. Jaress that it is prudent for
7 not only water providers but wastewater providers to plan.
8 But it's one thing to plan internally with very little
9 certainty as to where you will actually be providing
10 service versus some level of approval by the Corporation
11 Commission, in our case, that there is a little more shape
12 and substance to the area that we would be planning to
13 serve.

14 And, I think, you can draw a line where you want
15 to draw a line, but I think we have made the case in our
16 settlement agreement that there is some logic to the
17 planning areas that we have identified. It does address,
18 primarily between Global and Arizona Water Company, our
19 respective planning areas. But I think in light of the
20 communities where we serve, they all have planning areas.
21 They insist on it or required to have planning areas.

22 The water resource element of, for instance, the
23 City of Casa Grande general plan and City of Maricopa,
24 even Pinal County's general plan, without having the water
25 providers prepare some formal plan of how they will serve

1 those areas leaves the cities with a great unknown as to
2 how water service will be provided.

3 It would be difficult to identify all of the
4 needs of these areas, including physical supplies of water
5 and how reclaimed water will be used, whether it's going
6 to be recharged or directly delivered. These are complex
7 issues to grapple with as a planner. And having more
8 certainty for the areas you are a looking to plan
9 provides, I think, a greater focus for the utilities to
10 plan.

11 Q. As president of one of the state's largest
12 private water utilities, would you say it would promote
13 and motivate you to settle such issues with a neighboring
14 and competing utility to have the availability of review
15 and formal adoption of a planning area by the Commission
16 or would it discourage such activity?

17 A. I think it would encourage entities to try to
18 reach settlement and to try to sort of line out, you know,
19 where does it make logical sense for one provider to be or
20 another.

21 And again, a planning area is simply that, a
22 planning area. It's not a guaranteed service area, but it
23 does have greater certainty for planning purposes than a
24 self-determined planning area without somebody else's
25 oversight.

1 The cities that I contact -- City of Casa Grande,
2 City of Maricopa, even the City of Coolidge -- when we
3 were looking to establish the areas that we would be
4 planning for, we wanted their input into that process.
5 Where did they see us providing water? Where did they see
6 themselves as a city growing to? And with their input we
7 helped to reach a planning area boundary that we thought
8 made sense and met the need of the communities where we
9 served.

10 *Q.* Let me step back now and ask a few additional
11 foundational questions as to Exhibit A-3, and then we will
12 move it.

13 Are the areas depicted in the colored boxes and
14 then shown on the adjoining legend, are those Arizona
15 Water's best attempt to plot the literal property areas
16 involved in the request for service to each of the
17 underlying developers as shown on the legend?

18 *A.* Yes, it is.

19 *Q.* Is that true and accurate to the best of your
20 knowledge and ability to so plot those requests?

21 *A.* To the best of my knowledge, yes.

22 *Q.* And then are the individual requests -- you say
23 these are current as of Friday afternoon, June 5th?

24 *A.* That's correct.

25 *Q.* Are these shown by letter and number over here on

1 the legend?

2 A. They are.

3 Q. And I think it's pretty self-explanatory, but the
4 legend contains, as set forth by you and your Staff, the
5 circumstances in the case of the numbers where there was
6 an original request for services.

7 Does that relate to the original application for
8 the CC&N extension?

9 A. Yes.

10 Q. And then I see for some of these you have
11 "updated verbal affirmation" and some "updated written
12 affirmation."

13 Can you briefly describe what that means?

14 A. An updated verbal affirmation is through
15 telephone calls we determined from the landowners that
16 they were renewing their request for service. Where we
17 had a written affirmation is we actually received a
18 written request for service reaffirming their request for
19 service, some simply failed to follow up with a written
20 request but did affirm that verbally.

21 Q. Is it typical for you in the course of an ongoing
22 CC&N application proceeding to actually have to go out and
23 ask for updated requests for service while the application
24 is still pending?

25 A. Normally we do not. I know this case has been

1 pending for, you know, three-plus years. I believe Staff
2 had a concern that some of the requests for service may be
3 stale, that there perhaps would no longer be a need for
4 service. And they asked us to find out if the property
5 owners still desired service.

6 Q. Have any of the property owners that you were not
7 able to chase down -- if we look at 5, 6 and 7, Hondo 640,
8 Parker -- strike that. Those have written affirmations.

9 I guess between the list the only one that
10 doesn't -- the only couple that don't line up would be --
11 that have neither a verbal nor a written affirmation would
12 be No. 13 -- am I reading that right; that's the KEJE
13 Group -- then 17 and 18?

14 A. That is my understanding as well.

15 Q. Are there circumstances -- is it your testimony
16 that representatives of Arizona Water personally made
17 efforts to contact these people by phone and letter?

18 A. That is correct.

19 Q. And they just didn't get a response at all?

20 A. In some cases there were no responses to written
21 requests or for the telephone calls that we made.

22 Q. And did any of these parties ever -- looking at
23 it from the other end of the telescope, if you will, did
24 any of these parties ever state any objection to you to
25 Arizona Water providing service or, to your knowledge,

1 intervene in this proceeding objecting to this pending
2 application?

3 A. There were initially, I believe, some objections
4 prior to the settlement that was in the earlier filings,
5 but I'm not aware of any objections to the company's
6 requested CC&N.

7 Q. And then you switched to letters as the
8 designation for the legend to show the follow-up --
9 post-settlement attempts to get additional requests for
10 service?

11 A. That's correct.

12 MR. HIRSCH: With that explanation, we would move
13 A-3.

14 ACALJ NODES: Any objection?

15 MR. HAINS: No objection.

16 ACALJ NODES: A-3 is admitted.

17 (A-3 was admitted.)

18 Q. BY MR. HIRSCH: While we are at it, I will ask
19 you to turn to A-4. These are the requests for service
20 themselves that are largely scattered among data requests,
21 and some of them attached to the original, and then
22 updated application for CC&N, which is in your prefiled
23 exhibits.

24 But what we have done here is to line up a
25 current version of all of the requests we have received

1 tabbed according to the numbers on the legend.

2 Can you take a second and look at A-4 and confirm
3 that that is a current state-of-the-art compendium of the
4 written requests for service that the company has received
5 in the area of its extended CC&N application tabbed by
6 alignment with the legend in Exhibit A-3?

7 A. Yes. It appears to be updated through June 5th.

8 Q. And are these true and accurate copies of letters
9 of requests for service that the company has received as
10 reflected in that exhibit?

11 A. They are.

12 MR. HIRSCH: We move A-4.

13 ACALJ NODES: Any objection?

14 MR. SABO: No.

15 ACALJ NODES: A-4 is admitted.

16 (A-4 was admitted.)

17 MR. HIRSCH: Judge, I have one other area to
18 cover.

19 Do you want to push onward or break now? What is
20 your pleasure?

21 ACALJ NODES: Let's finish his direct, and then
22 we will break for lunch.

23 MR. HIRSCH: Good.

24 Q. BY MR. HIRSCH: One area that wasn't specifically
25 addressed -- I will go back over to my seat here --

1 Mr. Garfield, in your prefiled direct and rebuttal related
2 to the issue of Staff's observation that there should be
3 both requests for service for water and wastewater in
4 order for the company to get a water CC&N.

5 Do you recall that Staff observation and
6 condition?

7 A. I do.

8 Q. And it's already clear from your testimony that
9 you oppose that. I want to get a couple other things on
10 the record that relate to that.

11 Can you generally explain, for purposes of the
12 record, how planning areas for wastewater service differ
13 somewhat than planning areas for water service in the
14 utility industry in Arizona?

15 A. Although I'm primarily involved with water, I'm
16 generally familiar with the process where wastewater
17 providers, before they can provide or even plan for that
18 service, must seek approval of what they call a 208 plan.

19 In this case, in this area, the administration,
20 more or less, of the 208 process goes through an entity
21 called the Central Arizona Association of Governments or
22 CAAG, which is basically addressing the 208 planning needs
23 for both Pinal County and Gila County. That is a federal
24 requirement under the Clean Water Act -- actually
25 Section 208 of the Clean Water Act, also, ADEQ, the

1 approval process for that planning, as well as the EPA.

2 That sets the framework for how an entity, like
3 Palo Verde Utilities, can seek approval for what it is
4 planning to do as a wastewater provider through an
5 organization that is made up of primarily the local
6 government in the Pinal County and Gila County areas. And
7 an entity can't simply come in, more or less, self-approve
8 its 208 plan; it has to meet approval of the entire CAAG
9 before it's even forwarded to ADEQ and the EPA. So it's a
10 fairly involved process.

11 Q CAAG being the C-A-A-G or Central Arizona
12 Association of Governments?

13 A That is correct.

14 Q Now, to lay a little more foundation for this,
15 your direct testimony early in its development, page 3
16 specifically I'm looking at, lists quite a few boards and
17 commissions and advisory panels that you serve on.

18 You still serve on those boards and committees?

19 A I do.

20 Q And in connection with your involvement, it
21 includes serving on stakeholder groups with all of the
22 entities you mentioned: ADEQ, ADWR, and many areas of
23 involvement in Pinal County.

24 Have you achieved personal familiarity with the
25 208 process and how that works?

1 A. Yes, I have somewhat. I have also talked a
2 number of times with some of the lead staff for CAAG. I'm
3 in pretty close communication with what their updated
4 planning efforts are within CAAG. I'm familiar certainly
5 with the entities that are members of CAAG, the cities
6 where we provide service.

7 Q. Let's take the 208 planning areas as they relate
8 to the area for which the company is applying for the CC&N
9 in this proceeding. I'm going to ask you to turn to
10 Exhibit A-5 first.

11 Did you cause to be prepared, in preparation for
12 today's hearing, a copy of some excerpts from the current
13 version of the City of Casa Grande General Plan 2020?

14 A. Yes, Mr. Hirsch. This is primarily -- this
15 Exhibit A-5 came directly from the City of Casa Grande's
16 web site for the City's general plan 2020, which is their
17 newest general plan. And the purpose for putting this
18 together was to demonstrate that where the City of Casa
19 Grande was looking to be the wastewater provider, where it
20 was planning to be the wastewater provider, and where they
21 anticipated Palo Verde Utilities be the wastewater
22 provider.

23 And in particular, if you look to the -- it's
24 page 138. There is a little yellow tab indicating that
25 page. And the center paragraph talks about, "With respect

1 to the wastewater facilities, the City of Casa Grande
2 provides wastewater collection and treatment," and then it
3 describes the area. It goes on to say, "It is anticipated
4 that Global Water (also referred to as Palo Verde
5 Utilities) provides services west of Montgomery Road."

6 And that determination through my many
7 discussions with the City of Casa Grande, was similar in
8 some ways to Arizona Water and Global. When we were
9 looking to find a logical boundary for us each to serve,
10 respectfully in different areas -- if I may point out on
11 the map here, the delineation of the Montgomery Road is a
12 north/south street. It carves through a portion of a
13 project called Grande Valley.

14 So with the exception of the Grande Valley
15 project west of Montgomery Road, the City is looking for
16 Palo Verde Utilities and the Global utilities to provide
17 wastewater service because it made logical sense for Palo
18 Verde Utilities to serve west of Montgomery Road through
19 facilities that Palo Verde Utilities was looking to
20 construct rather than have the City of Casa Grande develop
21 its own wastewater plant in that area.

22 So they determined, through my conversations with
23 the City of Casa Grande, that it was -- made logical sense
24 for Palo Verde Utilities to serve in that area.

25 Q Is Exhibit A-5 the appropriate excerpts, to your

1 understanding, of the City of Casa Grande general plan off
2 its web site that addresses the issues that you just
3 testified to?

4 A. It is. I included for identification purposes
5 the cover sheet, the table of contents, and the entire
6 section that deals with the water and wastewater portion
7 of the City's new general plan.

8 MR. HIRSCH: Okay. We move A-5.

9 ACALJ NODES: Any objection?

10 MR. HAINS: No.

11 ACALJ NODES: A-5 is admitted.

12 (A-5 was admitted.)

13 Q. BY MR. HIRSCH: Now, turning to A-6, another map,
14 can you explain what this document is and where you got
15 it?

16 A. Yes. Exhibit A-6 I received from Graham Symmonds
17 at Global Water. This identifies their approved 208 area.

18 And, if I may, this map, which is Exhibit A-6,
19 shows a green hatch-mark area, which I believe basically
20 surrounds the Ak-Chin community. And that 208 area,
21 approved by ADEQ, CAAG, and EPA, identifies where Palo
22 Verde Utilities is the recognized wastewater provider in
23 that area for planning purposes.

24 Q. Before I move it, I will ask you to look at
25 Exhibit A-7.

1 Did you ask your engineers to plot the City of
2 Casa Grande 208 area boundary that you already testified
3 to and the Global 208 area boundary on the top of the map
4 we are more familiar with, A-3, the request for service
5 map?

6 A. That's correct. Exhibit A-7 basically takes in,
7 I believe it's Exhibit A-3, but then further adds the
8 detail of who is planning to be the wastewater provider
9 generally in the area where we are seeking an extension.

10 So the clean dash line or dotted line identifies
11 the best that we can determine where that boundary
12 overlaps or covers the requested CC&N extension area for
13 water services that Arizona Water has requested.

14 Q. Now, comparing this to A-6, A-6 is on a GIS
15 system that uses township and ranges; it doesn't have
16 roadways on it. A-7 does, so it's a little more usable to
17 those of us who are used to road maps.

18 Did you take care to accurately overlay the
19 boundaries as shown on A-6 on A-7?

20 A. I did, and I actually had a discussion with
21 Mr. Symmonds this morning about whether we accurately
22 reflected the 208 boundaries on this map. And the map
23 that we show here on Exhibit A-7 shows the 208 boundary
24 going down and touching the northern boundary of the
25 Tohono O'odham Nation that actually may be shown too far

1 to the south based on the actual approved 208 area that
2 Global has.

3 And we were going from a map that doesn't really
4 have a real section boundary; it was more of a GIS map.
5 So I believe that we may have shown the boundary going too
6 far to the south by a mile or so.

7 Q With that exception, is -- if we line up the
8 right-hand side of A-6, can we see the little divot there
9 at township 6 south, range 5 east, for example, that
10 reflects the area that is shown on A-7 between McCartney
11 and Gila Bend Road that cuts in a bit to the east?

12 A That's correct. If I may try to show where that
13 boundary is on this map, I'm not sure if this map up here
14 is a good map to show it or not.

15 Q Yes.

16 A Well, you can see the area I'm showing you here
17 is a section and a quarter that is actually Casa Grande
18 West Water Company. That is -- the western boundary of
19 it, which is Montgomery Road, forms the line heading south
20 from Gila Bend Highway. And where it goes south all along
21 Montgomery Road, it should turn back, I believe, west,
22 along this boundary of the Tohono O'odham Nation, probably
23 a mile and a half or so north of where we show the
24 boundary here.

25 But we were going from a map that had less

1 detail, and certainly Global has a lot better handle on
2 their 208 plan. But we were going from our best estimate
3 from where that boundary was from the information that we
4 had.

5 Q So with that correction, does A-7 overlay, to the
6 best to your ability, the Global and City of Casa Grande
7 boundaries for requests for service area?

8 A Yes, with that change, I believe it does.

9 MR. HIRSCH: All right. We move Exhibits A-6 and
10 A-7 with that correction.

11 ACALJ NODES: Any objection?

12 MR. HAINS: Just a clarification, I missed some
13 of the discussion there about which actual document we are
14 talking about.

15 Which is the one that shows the 208 plan going
16 south?

17 THE WITNESS: Mr. Hains, Exhibit A-7 shows what
18 we believe to be the correct boundary in relation to our
19 CC&N extension area.

20 So if you look at where the brown parcels are
21 indicated, Parcels D, the southern boundary of that should
22 go -- of Parcels D, should go straight west until it hits
23 John Wayne Parkway. That is effectively about a mile and
24 a half further north than we show on Exhibit 7.

25 ACALJ NODES: So at Hanna Road -- where it says

1 Hanna there, that is where it should turn westward and go
2 straight across to John Wayne Parkway; is that correct?

3 THE WITNESS: Okay. I'm looking for -- Judge
4 Nodes, I'm looking at -- it says Shedd Road on the south
5 of Parcel D.

6 ACALJ NODES: Okay. That is where it should go
7 westward? I thought you said the northern boundary of
8 where those Ds were in the brown shaded area.

9 THE WITNESS: I'm sorry if I said that, Your
10 Honor. I meant there was a southernmost portion of the
11 parcels labeled D on this legend. I'm sorry.

12 ACALJ NODES: So where it says "Shedd," that is
13 where it should run a straight line westward towards
14 John Wayne Parkway to the Global 208 approval?

15 THE WITNESS: Yes, sir, Your Honor. That's
16 correct. I'm sorry for the confusion.

17 ACALJ NODES: So actually the 208 plan there is a
18 little bit of a gap, as you understand it then, between
19 the Ak-Chin -- or I'm not sure what reservation.

20 THE WITNESS: Your Honor, it's the Tohono O'odham
21 Nation.

22 ACALJ NODES: Okay. There is a section just at
23 the northern boundary or above the northern boundary of
24 the Tohono O'odham reservation for which there is no 208
25 approval?

1 THE WITNESS: That's correct.

2 ACALJ NODES: It's just a little gap for a mile
3 or a mile and a half?

4 THE WITNESS: A small gap, and talking to
5 Mr. Symmonds he can address that perhaps later.

6 But I believe to the extent that wastewater
7 service will be needed in that area, an amendment to the
8 208 plan would be necessary to bring an additional area
9 into their 208 plan?

10 ACALJ NODES: Okay. Thank you.

11 Q. BY MR. HIRSCH: Okay. Having taken the time to
12 detail this and correct A-7, can you explain to
13 Judge Nodes why the 208 planning areas as adopted by CAAG
14 as shown on these exhibits give you a degree of comfort
15 that the wastewater service provider is, more or less,
16 established for the areas for which you are seeking the
17 water CC&N?

18 A. A critical step in my mind for any wastewater
19 provider to be able to provide service is to have the 208
20 approval. Without that they cannot provide wastewater
21 service.

22 So to me it's a key component for anybody to be
23 prepared to provide the service, the wastewater service,
24 same thing with the City of Casa Grande east of Montgomery
25 Road.

1 Q Is there any parallel to Section 208 for approval
2 that is necessary for the provision of water service that
3 you are aware of?

4 A I would say it's similar in some ways to requests
5 for approval of planning area here that we are requesting
6 for our water planning area.

7 The distinction is that CAAG was formed in 1970
8 to basically coordinate wastewater and a clean water
9 perspective in the areas where these cities existed. So
10 one entity wouldn't come in, come up where their own idea
11 of what a wastewater would be provided, or even reclaimed
12 water service perhaps. And it gives the community an
13 ability to review the plans that are being proposed and
14 the areas for which planning is being proposed and to get
15 the approval of those entities, the members of CAAG, I
16 think it's a very important thing for them to have.

17 Q To the extent their concerns that Staff felt
18 would have required a literal request for service by an
19 individual landowner, do you have an opinion as to whether
20 or not the Section 208 approval under the Clean Water Act
21 should provide the necessary degree of comfort?

22 A I think, in my mind, it certainly identifies a
23 provider who is planning to be the wastewater provider,
24 and as indicated such by including them in the 208 plan.

25 If they had no intention of serving wastewater service,

1 they would not have included it in your 208 plan.

2 Q Do you feel that if any condition is to be
3 imposed by way of a request for wastewater service as it
4 applies to the request for water service, that the 208
5 designation should suffice?

6 A I think for the time being, I believe it should.

7 Q In light of the time, I will truncate what would
8 be a detailed list of questions; although, they were
9 basically asked in your prefiled direct. I will just ask
10 an overarching question.

11 As of today's date, Mr. Garfield, is Arizona
12 Water ready, willing and able to serve the areas for which
13 it has applied to extend its CC&N in this proceeding?

14 A We are.

15 Q And you have no outstanding regulatory or
16 compliance issues that impairs your ability to do so?

17 A None that I'm aware of.

18 Q And what would be the rate structure that would
19 be used if this certificate is granted?

20 A Our current Casa Grande rates.

21 Q There are -- does the company have existing
22 identified water resources that it projects allow to serve
23 water to meet the needs of the landowners in the area as
24 they request it?

25 A We do. In fact, we have spent about two and a

1 half years doing a physical availability demonstration
2 with the Department of Water Resources. We had initially
3 determined a planning area that included part of Santa
4 Cruz Water Company's area that they are seeking in this
5 case or certainly at least their planning area that they
6 are seeking in this case, and we modified the planning
7 area boundaries to reflect the settlement agreement. And
8 we made the corresponding changes in our application with
9 the Department of Water Resources to demonstrate the area
10 of supply to serve the area that we are planning to serve.

11 Q And has the company both sent and published the
12 notices as were required in the procedural order in this
13 proceeding?

14 A We did.

15 MR. HIRSCH: That is all I have.

16 ACALJ NODES: All right. We will take a lunch
17 break until 1:30. We will return with cross-examination.

18 (Whereupon, a recess was taken from 12:20 p.m.
19 until 1:31 p.m.)

20 ACALJ NODES: Okay. Let's go back on the record.

21 Mr. Hirsch, you had concluded your direct
22 examination?

23 MR. HIRSCH: That is correct.

24 ACALJ NODES: All right. Mr. Sabo, did you have
25 any questions for Mr. Garfield?

1 MR. SABO: I do not.

2 ACALJ NODES: And, Mr. Hains?

3 MR. HAINS: Thank you.

4

5 CROSS-EXAMINATION

6

7 BY MR. HAINS:

8 Q Good afternoon, Mr. Garfield. How are you?

9 A Good morning, Mr. Hains. I'm doing fine.

10 Q I wanted to start out with -- you started out
11 with requests for service, so I will talk about the
12 staleness issue and whatnot.

13 Do you think it's appropriate to confirm when
14 there has been a lengthy period of delay from when an
15 initial request has been made? You know, is there any
16 skin off the teeth of anyone to get a confirmation that
17 the interest is still there to eventually develop a lot
18 and necessarily require water and wastewater service?

19 A Do I think it should be required? No, I don't
20 think it should be required.

21 Q But would you agree that it's at least prudent to
22 confirm it? You know, I understand that your position is
23 that it shouldn't be a requirement to confirm it, but do
24 you see any harm in having a confirmation?

25 A If we thought it was totally harmful, we probably

1 wouldn't have made the follow-up letters or telephone
2 calls that we did make. But it doesn't take away from the
3 fact that the property owners requested service and have
4 been noticed that we are serving the area.

5 Q I understand.

6 Is it unheard of for a property owner to change
7 their mind over a course of time?

8 A If you are familiar with the Cornman Tweedy
9 proceedings, you will see that that does happen. Not
10 necessarily is a valid reason to delete a CC&N or to delay
11 extending CC&Ns because I believe there is a broader
12 public benefit by extending CC&Ns rather than just
13 individual property owner's desires.

14 Q Okay. But the point was that it is not
15 inconceivable that there'd be a change in the desire or
16 the interest.

17 Would you agree with that?

18 A Certainly. There could be a change or desire in
19 the interest, correct.

20 Q Okay. Talking about the water CC&Ns and
21 specifically the issue that Arizona Water has -- just
22 provides water service and the issue being securing sewer
23 service as well as securing the water CC&N for Arizona
24 Water, first off, is it your understanding that a
25 developer can sell a home or not with -- let me start

1 over.

2 Could a developer sell a home that did not
3 actually have water or sewer service connected?

4 A. Yes.

5 Q. As a practical matter or as a legal requirement?

6 A. We serve water to homeowners all the time that
7 aren't part of a subdivision that require water service
8 that may have their own domestic septic system, for
9 example, on larger lots typically. In some cases probably
10 an owner can develop their own well without receiving
11 service from a water provider if they are not a
12 subdivision and requiring assured water supply for them.

13 Q. From your perspective, being a water provider, I
14 can see how that would make it certain amount of sense.

15 What about in the reverse? If you had a
16 wastewater provider and no water provider, would it make
17 sense to extend a wastewater CC&N in that circumstance?

18 A. I would say, yes. And part of it is that the
19 timing involved in extending CC&Ns. We are -- for good
20 reasons we are three-plus years in on this proceeding, and
21 the decision is still not rendered. And granted, some
22 delays perhaps were caused by the co-applicants in this
23 matter, but the length of time in seeking entitlements and
24 permits is a very lengthy process.

25 So the fact that a request for water service

1 might proceed a request for wastewater service or vice
2 versa doesn't, in my mind, establish that there isn't a
3 need for either of these services or both of the services
4 at some point. It may be a matter of timing and the
5 property owners coming forward with the property request
6 for service.

7 Q One of the -- let me start over here.

8 One alternative that Arizona Water has suggested
9 is that for areas where Global is not going to be the
10 anticipated sewer provider that the City of Casa Grande
11 would be the alternate, and that would be for the portions
12 just directly south of the city of Casa Grande; is that
13 correct?

14 A Actually, I think what is in my exhibits here
15 this morning show that the City of Casa Grande is planning
16 to provide wastewater service east of Montgomery Road,
17 within the city planning area east of Montgomery Road
18 except for that part of that Grande Valley project that
19 extends east of Montgomery Road. They are anticipating
20 and looking for Palo Verde Utilities to provide wastewater
21 to the west.

22 So it's not so much that there is an alternative
23 if Palo Verde is not the wastewater provider, but they are
24 already effectively planning almost the entire area that
25 we are requesting, both east and west of Montgomery Road.

1 Q. Maybe I misunderstood or I just don't have a
2 great understanding of what is contemplated with the 208
3 plan.

4 Do you have Exhibit A-7 up there with you?

5 A. I do.

6 Q. And looking at it, it looks like -- you know,
7 bearing in mind the discussion that was provided earlier
8 about the correction to it, that, more or less, it is a
9 north/south division between the Casa Grande and the
10 Global 208s; is that correct?

11 A. Essentially there is an east/west divider between
12 Casa Grande and Palo Verde Utilities with a north/south
13 line delineating east and west.

14 Q. Right. Okay.

15 To that extent, maybe I just didn't understand
16 your response to the earlier question of, who are those
17 portions that are south -- well, let me first ask you
18 this: Is the -- where is the southern boundary of the
19 city of Casa Grande?

20 A. The current city limits?

21 Q. Yes.

22 A. I don't have that on my map up here.

23 Q. Okay. So it's not actually what I believe is
24 marked as Hanna Road? That would not necessarily be the
25 southern boundary?

1 A. I don't have the information about the city
2 limits in front of me. That tends to change from time to
3 time as they annex other properties into the city. So I
4 don't have a current city limits map in front of me here.

5 Q. All right. Well, not being in a position to know
6 that myself either, if we assume for purpose of this
7 discussion -- is it Hanna Road or Hanna Road?

8 A. I would pronounce it Hanna Road.

9 Q. Hanna Road, if we assume that that is the
10 southern boundary -- I'm just asking you this to explore
11 what is built into a 208 plan here and use of Casa Grande
12 as the sewer provider -- how would -- what certainty is
13 there that Casa Grande would extend service beyond that
14 point?

15 A. Outside of the city limits but within their
16 planning area?

17 Q. Right.

18 A. I believe everything that the City puts out --
19 their general plan, their wastewater feasibility studies,
20 their reclaimed water master planning -- is consistent
21 with them serving the entire area within the City's
22 planning area that is not already expecting to receive
23 sewer service from Palo Verde Utilities.

24 Q. If a property is located within the planning area
25 or within the 208 plan but not strictly within the City's

1 limits, is there anything comparable to like an obligation
2 to serve for the City of Casa Grande to extend sewer
3 service beyond that point?

4 A. I'm not sure if the general plan itself that they
5 adopt, which does go through a public process and the
6 voters have to approve the general plan, that that doesn't
7 in a way obligate to the City to provide service. They
8 have extended themselves out; that is within their
9 planning area and that they would provide service.

10 And typically when a project moves forward with
11 development, it will seek the approvals necessary from the
12 City, which generally involve predevelopment agreements or
13 preannexation agreements, which line out all the
14 requirements for service.

15 Q. With respect to the 208 plans, either for Global
16 or for any utility or the City, do you know if sewer
17 service can be provided absent a 208 plan in effect for
18 any of these areas?

19 A. Without -- you mean a new wastewater provider
20 coming in?

21 If you don't have a 208 plan, my understanding is
22 you cannot build wastewater treatment plants, you can
23 build collection systems, you cannot provide wastewater
24 service without having a 208 plan that adopts or
25 incorporates your plan and your facilities you hope to

1 construct.

2 Q. And thank you for that.

3 If there is a 208 plan that is in place, does
4 that effectively -- is there a process for -- if a
5 competitor wanted to establish another 208, is it possible
6 to have changes or overlapping 208s?

7 A. I have not seen overlapping 208s. I have seen,
8 for example, in one of the Robson's projects in the Casa
9 Grande area, quite a brouhaha sort of developed when
10 within the City's planning area a new wastewater provider
11 popped up, which was perhaps missed on the radar screen.
12 But the CAAG itself would have to have approve the 208
13 plan, and it is a large membership that makes up the CAAG.

14 So a single entity, like in that case, the City
15 of Casa Grande by themselves, may not have been able to
16 stop or prevent CAAG from approving a new wastewater
17 provider coming in. But it's effectively you have to have
18 the approval of CAAG in order to be approved for -- what
19 you have in mind is a wastewater provider in your own 208
20 planning.

21 Q. So if my understanding of what you are saying is
22 correct then, then once a 208 plan is in effect, you could
23 then -- I don't know if rest on that is the right way to
24 look at it -- but you would expect that it would be
25 unlikely that another entity would be granted a 208 within

1 the bounds of what you were granting for a 208?

2 A. I believe without a 208 amendment taking place
3 that would reflect some other way of providing wastewater
4 service. And again, we would have to be able to prove up
5 CAAG, ADEQ, and the EPA.

6 Q. I see.

7 You talked about the newcomer with the Casa
8 Grande city limits, the brouhaha you discussed earlier.

9 Is it inconceivable to have start-up utilities
10 spring up providing sewer or water service within Arizona?

11 A. In Arizona as a state?

12 Q. As a state, sure?

13 A. I think wherever there is new development,
14 especially where the developers are looking to provide the
15 services themselves, there are start-up utilities that are
16 formed to serve them.

17 Q. And in your experience have there ever been
18 start-up utilities that have sprung up in the midst of
19 largely certificated areas that have had gaps between
20 actual certificated areas?

21 A. Such as the Woodruff case?

22 Q. For instance.

23 A. That's a good example. A bad decision, but a
24 good example.

25 Q. But it does happen?

1 A. It does, even though our cost was half the other
2 utility.

3 Q. Understood.

4 One of the ways that you discussed alternate ways
5 to demonstrate a need for service as part of your -- the
6 explanation of why a request for service shouldn't be the
7 single aspect to demonstrate the need for service, on that
8 topic, first -- well, let us get right to it.

9 You mentioned the nine-factor test or nine-factor
10 guideline that Staff articulated at one time.

11 Do you recall that?

12 A. Yes.

13 Q. Is in your experience with regulated utilities
14 and whatnot, have -- is it your understanding that from
15 time to time policies can be modified, they can evolve,
16 they can adapt over time as the agency refines its
17 position?

18 A. I have seen perhaps a lack of policy. Policies
19 changing -- yes, policies do change.

20 Q. Okay.

21 A. If that is the question you are asking.

22 Q. And is it your general experience that an agency
23 staff would cling to certain policy positions that may
24 come into conflict with the evolving position of the
25 overall agency?

1 A. I would say that Staff's positions or policies
2 don't always accomplish the public interest, and I think
3 the nine factors that were present by Staff in previous
4 cases before the Commission were well founded. I believe
5 the benefits achieved by looking at those factors when
6 awarding CC&Ns do advance the public interest.

7 And the fact that a policy could change or a
8 decision can change from one case to another, it's not
9 always consistent necessarily overall with the public
10 interest that is achieved by, I believe, those nine
11 factors.

12 Q. Of those nine factors, I did notice that it
13 seemed like there was some emphasis placed on two of those
14 factors, in particular contiguity and closing gaps. And
15 with respect to those interests, I assume that Arizona
16 Water was pushing that there is economic and engineering
17 efficiencies to be had that should be looked at as well as
18 other bases to demonstrate a need for extending a CC&N?

19 A. Yes, I believe so.

20 Q. And generally those benefits are characterized as
21 economies of scale with larger, better designed facilities
22 that you can provide service on a per-customer,
23 per-connection basis more cost effectively than in a
24 smaller facility?

25 A. I think generally that is true.

1 Q. What happens if the construction -- if plant is
2 built to an economy of scale size where the need actually
3 doesn't exist that would justify or that would be
4 completely served by facilities of that scale?

5 A. If you are asking me if Arizona Water would
6 greatly oversize a facility on the speculation that growth
7 will develop, there is some risk inherent with that. But
8 with the same token, the offset to that is if you don't
9 plan in a prudent way and you install facilities that are
10 meant only for the immediate need, you will have to go
11 back and either replace or parallel or build redundant
12 facilities to accomplish the needs of the next customer
13 that comes along the line.

14 So there is somewhat of a balance that has to be
15 struck with what is prudent to construct today for what
16 will benefit some future use and will have some
17 efficiencies in handling it that way versus handling
18 things on a project-by-project basis.

19 Q. On this track but somewhat not, what we are
20 talking about here of the economies of scale, but is it
21 typical -- is it typical inside of CC&Ns to have
22 conditions after the granting of the CC&N compliance
23 conditions, such as bringing in an approval to construct,
24 approval of construction or various DWR requirements like
25 designation of assured water supply -- are you familiar

1 with those kind of requirements?

2 A. I am.

3 Q. And to that extent there are requirements of that
4 sort, specifically the DWR ones like the DAWS and CAWS,
5 those are not strictly compliance requirements that the
6 utilities can necessarily, of its own initiative,
7 completely fulfill on its own; is that correct?

8 A. That's correct.

9 Q. It requires some developer or the person
10 requesting the services to follow up on and develop that
11 application in front of DWR; is that correct?

12 A. Well, in our case most of the projects receive
13 their assured water rules through the certificate process.
14 And that is an application by the applicant or the
15 developer towards the -- we are a part of that, whether it
16 involves a GRD membership or whether it involves prudent
17 physical supplies.

18 But I'm generally familiar with that, and it's
19 not totally within our control, correct.

20 Q. Okay. And on that point, Arizona Water has -- in
21 your experience, there has been circumstances where there
22 has been difficulty in complying with requirements of that
23 nature sometimes because developers who are not actually
24 in the position to move ahead with construction and in
25 that light also lagged behind in developing their DAWS and

1 CAWS requirements?

2 A. There are some delays; that is correct.

3 Q. If the public interest in favor -- lies in favor
4 of certainty in providing services, how does granting a
5 CC&N where it's uncertain that the growth will occur --
6 if, for example, that, you know, a developer is not going
7 to come forward or may not come forward with the DAWS or
8 CAWS, how is that served? The certainty interest, how is
9 that served?

10 A. We have many areas where we had CC&Ns granted for
11 40 years, some of which are quite larger than the actual
12 area being served. Stanfield is an example. We have
13 16 square miles and a relatively small customer base
14 within Stanfield. We have the obligation to serve in that
15 area, which means when development comes forward, we have
16 to be in a position to provide service to that development
17 and we may have to fund certain improvements.

18 But the bottom line is, people that have land
19 within our area that need service, they know our way of
20 doing business, they know what is required. We have a
21 consistent engineering department that deals with the
22 projects as they come forward. It's a single company mind
23 as it pertains to development. So that provides, I think,
24 a great deal of certainty with property owners in our
25 area.

1 And I think because of the fact that we have
2 received, of all the property owners that we have noticed,
3 no objections from property owners to be included tells me
4 that the majority of property owners, even if they are not
5 ready to proceed today, perceive that as a benefit or
6 providing certainty. If any of them saw that this was a
7 bad thing and raised objection, I sure haven't seen that.

8 So I think having a CC&N provides certainty to
9 us. We are obligated to provide service. We need to be
10 ready, willing, and able to serve those projects within
11 our area, and we plan for that.

12 Q Well, going on with the certainty of service and
13 the certainty to Arizona Water and the benefit of that,
14 there is also the request for the approval of the planning
15 areas, and that is also a certainly interest for Arizona
16 Water; is that correct?

17 A I think it is a form of certainty in that how can
18 a utility plan -- properly plan without a define boundary?
19 On what basis do you plan? Do you plan how far can we
20 possibly grow in 50 years? How far do we possibly grow --
21 you would have to have a Ouija board to figure out where
22 it is development is going to occur.

23 You would have to have some framework from which
24 to plan. If you are planning only to extend a mile out
25 from your CC&N, that is a lot easier to plan for than

1 something that has maybe a depth of say 10 miles out from
2 your CC&N. But having that area defined, especially when
3 we did our -- if you recall, I talked to Mr. Hirsch --
4 responded to Mr. Hirsch earlier, that we plan for physical
5 supplies of water, we have to know what are the demands
6 going to be that we are expected to serve, and what are
7 the proven supplies in our area that we can use to
8 demonstrate the ability to meet the service demands of
9 those areas.

10 If you don't have a defined boundary, I'm not
11 sure what you would be planning towards; the state of
12 Arizona, I suppose.

13 Q Well, maybe that, for example -- I mean, let me
14 ask you this: You want to define boundaries. You
15 indicate that that is an important interest to Arizona
16 Water.

17 Why not request a CC&N application that extends
18 to all the boundaries of the planning area in just one
19 fell swoop?

20 A Well, perhaps in some ways without having more
21 demonstration of necessity for service, maybe now is not
22 the time to apply for that.

23 Q Okay. Talking about the boundaries of the -- or
24 the framework of this planning area, can you generally
25 describe how the planning area that Arizona Water is using

1 for at least this immediate vicinity here, how it is
2 generally aligned?

3 A. How what is aligned?

4 Q. How it's physically aligned. What territories
5 are being marked out by your planning area?

6 A. In our planning area?

7 Q. Yes.

8 A. I believe you are referring to the settlement
9 map. It describes a planning area boundary. My exhibits
10 are not labeled on my attachment up here. It should be
11 under the settlement agreement.

12 Q. And I think I see now it's labeled as Exhibit B
13 to the settlement agreement?

14 A. I have Exhibit 2. It should be labeled
15 Exhibit 2, which shows Arizona Water revised Pinal Valley
16 Water System Planning Area Boundary as amended. It takes
17 in more than the immediate area around Stanfield but shows
18 the planning into the Arizona City area and also into the
19 Coolidge area.

20 MR. HIRSCH: If I can approach, I could give
21 Mr. Garfield, if you want, a settlement agreement map.

22 MR. HAINS: If that is more convenient.

23 MR. HIRSCH: I think that is better than him
24 going through the piles of papers in front of him.

25 THE WITNESS: I have the map.

1 Q BY MR. HAINS: And I didn't actually have a great
2 number of questions about it. I just wanted to get a
3 general sense of, looking at this planning area, one
4 thing, as you indicated, it is largely dominated by the
5 city of Casa Grande, Coolidge, Arizona City and Stanfield?

6 Would that be a fair assessment?

7 A Yes.

8 Q And it looks like most of -- it looks like the
9 largest empty portions here tend to be towards the east of
10 Coolidge or the surrounding areas of Arizona City to the
11 south of Casa Grande?

12 A I believe so, yes.

13 Q And that is actually beyond the scope of the
14 immediate vicinity of the CC&N that is the subject of this
15 application that could be described by Exhibit A-7 or
16 A-6 -- well, actually A-7 or A-3?

17 A That's correct.

18 Q In addition to definiteness with the company and
19 for the parties settling, is looking at benefits to the
20 agreement and the planning areas that are subject -- or
21 that are part of the agreement, is there no benefit to the
22 planning areas that have been settled to absent an
23 approval by the Commission?

24 A There are always benefits by having a planning
25 area, but I believe having a Commission-approved planning

1 area provides a greater level of certainty and at least
2 the Commission views that the planning area is reasonable
3 and prudent.

4 Q And is that the extent of the additional benefit
5 of the Commission approval, is sort of -- I don't know if
6 it's a regulatory blessing, but an acknowledgment that it
7 is to some extent on the Commission's radar that after you
8 have put it on the radar, that they acknowledge it?

9 A Having a planning area proposed is not a new
10 concept. Cities have been doing it for many years, some
11 of which have entered into territory disputes even among
12 the cities.

13 And generally they resolve those boundary
14 disputes themselves, since it's one government entity
15 dealing with another government. That is what the Town
16 the Maricopa and Casa Grande have done, the City of
17 Maricopa, the City of Coolidge, and the City of Casa
18 Grande, and even, I believe, Eloy and the City of Casa
19 Grande are resolving where it makes sense for each of them
20 to provide service and to plan for.

21 Q Well, that is interesting. As you express it,
22 there is city on city and we have here utility on utility.
23 It seems like a pairing of equals.

24 And what occurs in my mind is that, why could you
25 not reach that agreement without necessarily a voice from

1 on high, as it were, you know, agreeing to the agreement?
2 Why cannot the two parties reach their agreement and just
3 agree to be held to whatever each of them asserts of what
4 they actually desire?

5 A. Because we don't operate in a regulatory-free
6 zone. We are regulated by the Corporation Commission, our
7 right to serve and our obligation to serve through a CC&N.
8 We don't self-determine where we will provide service;
9 whereas a city, maybe through electoral or voter process,
10 may.

11 So to that extent we have no equivalent
12 counterpart that can agree among ourselves, and that would
13 be the end of the story.

14 Q. Well, let me put it this way: To get a CC&N
15 generally a utility has to apply for a CC&N.

16 Would you agree with that?

17 A. That is correct.

18 Q. Okay. And can Global and Arizona Water not --
19 mutually agree not to apply for CC&Ns in territories that
20 are desired by the other?

21 A. We can have an agreement among ourselves. That
22 is what the settlement agreement is.

23 Q. And strictly speaking, you don't need the
24 Commission to allow you to agree not to directly compete
25 in that sense.

1 Would you agree with that?

2 A. We do need the Commission to approve the
3 agreement.

4 Q. For purposes of the specific agreement, I
5 understand that that is a term of the agreement. Let me
6 rephrase it in a general sense.

7 Generally you would not require Commission
8 approval in order to reach a hypothetical agreement
9 between one utility and another to not apply for CC&Ns in
10 areas that either utility has indicated that they have an
11 interest in expanding forward.

12 A. I think there are benefits received in having the
13 Commission approve such a settlement agreement.

14 For example, I'm not an attorney, but there is a
15 benefit by having a public-bound Commission approve
16 planning areas, settlement agreements, CC&N extensions,
17 because we are not going to go foul with antitrust by
18 carving up areas on our own. And defeating competition,
19 defeating in a vacuum among ourselves, we are seeking the
20 Commission's approval and blessing for the settlement
21 agreement and the planning areas.

22 Considering all public factors and benefits
23 achieved and disadvantages and advantages and coming up
24 with a decision that affirms the terms of the settlement,
25 planning areas, and a CC&N.

1 Q Fair enough.

2 One of the benefits of the particular agreement
3 is that you've indicated that under this agreement that
4 Arizona Water would be able to be in a position to resell
5 reclaimed water from Global; is that correct?

6 A Yes.

7 Q And would it be possible for Arizona Water to
8 otherwise reach an agreement to provide the bulk water
9 service -- excuse me -- the resaled water purchased from
10 Global, it's not possible to have an agreement in a vacuum
11 to do that?

12 A Outside of a settlement agreement?

13 Q Just as a business transaction. If it proved
14 beneficial to Arizona Water as another service to provide
15 that could generate revenue.

16 A I'm not sure. If you could rephrase the question
17 or state it again.

18 Q Sure. Let me put it this way: You would agree
19 that -- well, would you agree that there is a benefit to
20 making efficient use of water resources that are available
21 in Arizona?

22 A I agree.

23 Q And to the extent that use of reclaimed water may
24 be a part of a well-designed program to efficiently use
25 scarce water resources, do you think that could be in the

1 public benefit?

2 A. Yes.

3 Q. And with appropriate pricing of sales of
4 reclaimed water that it could be a business benefit as
5 well? Is that possible?

6 A. A business benefit?

7 Q. To the utility.

8 A. In the form of?

9 Q. Recovered rate for appropriately-tariffed rates.

10 A. The tariffs that the company has currently for
11 reclaimed water service are designed as a pass-through of
12 rates. Where there is investment, presumably at some
13 point in time the Commission would provide for a return on
14 an investment.

15 In the case here, what we are seeking for the
16 Commission to approve is the sale of reclaimed water in a
17 settlement agreement from Palo Verde Utilities to the
18 company. The purpose for that -- one of the strong
19 purposes for that is that we can maintain the resources in
20 the area where we are providing water. It's important for
21 the cities where we serve that the treatment water
22 generated in that area remains in the area and serves to
23 improve or maximize the resources that are available to
24 the area.

25 It's not an unlimited water supply area. I don't

1 know that anywhere in the nation is. But water is scarce,
2 as you pointed out, and I think having the reclaimed water
3 remain in our area, with Arizona Water as the provider,
4 maintains that water in the area.

5 And another benefit is that by the potable
6 provider and the reclaimed water provider being one, one
7 and the same, we can gear and plan for the uses of
8 reclaimed water that don't unnecessarily interfere with
9 existing users that we have that could devastate the
10 company financially by having a competitor come in our
11 area and offer a resource that will take away from the
12 potable.

13 Not to say that we don't want to achieve the same
14 end results. We have a number of nonpotable CAP customers
15 and we see the benefit of bringing reclaimed water to
16 those as well as recharging. It's not all necessarily
17 direct deliveries. Recharge or recovery in the area is
18 also important.

19 MR. HAINS: Thank you. I don't think I have any
20 more questions.

21

22

EXAMINATION

23

24 BY ACALJ NODES:

25 Q. Good afternoon, Mr. Garfield. As you might

1 guess, I have just a few questions.

2 A. Yes, Judge Nodes.

3 Q. Let's start with the issue of the company's
4 desire to have some certainty through the Commission
5 approval of the agreement.

6 You have indicated that that is one of the
7 benefits to the company's and the public interest, I
8 believe; is that right?

9 A. To have the Commission approve the settlement
10 agreement?

11 Q. Right.

12 A. Yes.

13 Q. Because it provides the company with some
14 additional level of certainty as far as where the company
15 is expecting to expand its service territory ultimately?

16 A. Correct.

17 Q. Isn't it the utility company's management
18 responsibility to, whether it has a specific Commission
19 approval or not, management's responsibility to make
20 planning decisions that are consistent with its obligation
21 to serve as a public service corporation?

22 A. Are you saying within our CC&N or in general?

23 Q. Just as a general matter.

24 A. I would think that it's a prudent thing to plan.

25 I don't believe it's an obligation of the company to plan

1 outside of its CC&N area necessarily.

2 We think it has a strong positive benefit both
3 for the customer, the company, and the Commission to know
4 with certainty that the entity that is in the area that
5 may or may not be determined to be the provider through a
6 CC&N extension process is planning.

7 I'm not sure if that is responsive, and if --

8 Q Well, let's just step back for a minute.

9 I mean, a utility company's management has
10 ongoing -- has to make ongoing decisions regarding any
11 number of planning issues, such as where to make capital
12 investments, where you anticipate growth is going occur in
13 order to make those investments, how much you need in
14 personnel in order to meet your ongoing needs to provide
15 service to customers, just in general.

16 A I would agree with that, yes, Your Honor.

17 Q And I guess the question is: Why does the
18 company need the Commission's stamp of approval on this
19 particular management decision regarding its proposed
20 planning area that makes it unique from any other
21 management decisions that the company would have to make
22 as a matter of course in its ongoing responsibilities as a
23 public service corporation?

24 A I think a lot of the decisions that we make, Your
25 Honor, are just as you described; we have to plan for what

1 are our water needs going to be for the next year;
2 five years from now where will growth occur, and so forth.
3 Within our CC&N we have the obligation to serve, and so I
4 think that carries with it a higher level of commitment to
5 that end.

6 Concerning the planning area, I mean, we have had
7 planning areas before without the Commission approving the
8 planning area. However, in this case we have an entity
9 that we have reached a settlement with, and so we are not
10 just planning. Basically we are an island, and we are
11 looking to plan for growth from this island and we are the
12 only entity out there. We have another entity right next
13 to us, and I think it's important, at least concerning the
14 entity next to us, that we have certainty as who is
15 planning to serve where.

16 Q. Well, I'm sure you do want a certain level of
17 certainty. I don't think that anyone is questioning that
18 that would provide some kind of benefit to the respective
19 companies. But why not extend it to the company wants to
20 seek preapproval or the Commission's blessing on proposed
21 plant investments or operating expenses? I mean, where do
22 you draw the line between everyday ongoing decisions that
23 have to be made by the management of the company without
24 any kind of preapproval of those management decisions,
25 such as where the company believes its planning area

1 should be?

2 A. Your Honor, if I might give an example.

3 ACALJ NODES: Hold on a minute. I don't know if
4 this is a wrong number or what.

5 (Off the record discussion.)

6 THE WITNESS: Your Honor, if I might provide an
7 example?

8 Q. BY ACALJ NODES: Please.

9 A. In our '99 test year rate case for our Northern
10 group, we were seeking approval for an arsenic
11 cost-recovery mechanism, and in that proceeding we
12 provided evidence of a cost of treating for arsenic. And
13 we gave our engineering estimates of what that cost was
14 going to be.

15 In that decision a finding of fact -- one of the
16 findings of fact is that the engineering costs were
17 reasonable, that the engineering -- the Staff engineer had
18 determined that the engineering costs were reasonable.

19 A determination that those costs were reasonable
20 gave us a little more certainty that the plan we had in
21 place and the cost that we had estimated were reasonable,
22 at least at that time, in front of that commission and
23 with that administrative law judge and that Staff
24 engineer, but there were no guarantees that when we went
25 formally for an ACR and cost recovery or in the rate case

1 that is currently pending that the plans will
2 automatically have an approval of the full costs, even if
3 they were deemed reasonable in a previous decision.

4 What did that provide to us? A little greater
5 certainty than, for example, if the Staff engineer had
6 determined those costs were unreasonable. We probably
7 would have walked away from that decision with a little
8 less certainty as to what our plan was to treat for
9 arsenic and extend 30-plus million dollars in that
10 investment. But it was no guarantee of a return on that
11 investment.

12 Q. Right. Well, you know, I understand you are
13 trying to make that comparison. But isn't that really an
14 entirely different situation in the sense that there was a
15 mandate by the federal government to reduce the amount of
16 arsenic that was allowed to be in the water and the
17 company and RUCO and Staff all recognized how costly it
18 would be and that it would be financially disastrous, not
19 only for Arizona Water but for some other companies, if
20 there were not some kind of surcharge allowed to expedite
21 recovery of those specific costs that were mandated by the
22 federal government?

23 A. That example is a federally-mandated compliance
24 with a new standard.

25 But there are other circumstances where a utility

1 seeks, for example, financing approval to fund its new
2 construction, and you look for approval by the Commission
3 to commit the funds to finance those things, and you
4 prepare estimates of what you are going to build. And
5 there is presumably a determination that, what the company
6 is planning to do with its money, making its investments,
7 are reasonable and that the financing is approved. Even
8 that doesn't guarantee that when you get into a ratemaking
9 proceeding, that you will necessarily find that the
10 facilities are fully used and useful, full cost recovery,
11 or if there is excess capacity in the plant.

12 In my mind, Judge Nodes, if to the greater -- the
13 greater amount of certainty that the utility has in
14 planning and performing what it must do as a utility, I
15 believe that it's prudent for the utility to have that.
16 And if we plan without Commission approval, we simply are
17 planning on our own accord with no necessary public nod or
18 Commission nod that what we are planning for is reasonable
19 or not.

20 Q. Well, those financing decisions, the reason why
21 Staff undertakes a review of the proposed costs for the
22 project that is going to be financed is so that there is
23 not some wildly out-of-proportion investment undertaken by
24 the company.

25 Isn't that basically it? Staff wants to make --

1 wants to be assured that the company's estimates for
2 specific plant are within the realm of reasonableness
3 based on an engineering analysis?

4 A. Well, one of the tests, Your Honor, is that they
5 do check to make sure that you will have sufficient
6 earnings to pay the interest charges on the loan. That is
7 probably a key component of the financial approval. But I
8 believe that the engineering staff of the Commission also
9 reviews the projects to be constructed.

10 Q. And every one of those orders carries a caveat,
11 do they not, that indicates that there is no preapproval
12 of any specific plant that's in accord with the financing
13 that is being approved?

14 A. I would assume that that is true. And similarly
15 with the planning area, that an approved planning area
16 wouldn't necessarily guarantee that you would be
17 ultimately decided as the provider for that area.

18 Q. And, you know, on this -- to this point, if your
19 particular companies are given this extra level of
20 assurance or certainty, should that be taken into account
21 in setting your company's respective rate of return
22 because if you have this approved planning area your
23 company conceivably could be -- could have less risk as
24 far as investment goes?

25 A. It could also carry with it some greater risk

1 depending upon the amount of area that you are planning
2 for. Depending on how you fund infrastructure, it may
3 carry with it, you know, a good obligation to build other
4 infrastructure that would require you to do more things
5 than that.

6 I just think that the benefits achieved by
7 planning are -- they don't just benefit the company or the
8 companies in this case, but they also benefit the
9 consumers that are out there. And without planning -- I
10 don't think there is a disagreement that planning is in
11 the public interest. I think what I'm hearing is, the
12 only concern is, should the Commission approve a planning
13 area? Is that something, a role, that the Commission
14 should play?

15 Q Right.

16 A In my mind it's not a role that the Commission
17 has played, but I think some of the problems that have
18 been seen, as far as utilities that aren't well situated
19 and aren't prepared, are those that really haven't
20 performed adequate planning.

21 Q Well, isn't what you are asking in this case for
22 this preapproval -- preapproved planning area kind of a
23 CC&N extension-like, in the sense that it's something
24 between no approval of your planning area but it's not
25 quite a full CC&N approval? Is that a fair way to

1 characterize it?

2 A. I don't call it CC&N-like, Your Honor. I see it
3 as a planning area.

4 And if a determination was that planning areas
5 are in the public interest and that was the sole approval
6 of the Commission, that the planning areas are approved as
7 being in the public interest, and we five years down the
8 road ultimately were decided not to be the water provider
9 for part of that planning area because the Commission's
10 review of the facts in that CC&N extension, that is just
11 the name of the game at the Commission. The Commission
12 will make its decision, and I don't see that it's a leg up
13 for a CC&N-like or however you might term that. I just
14 don't see it that way.

15 Q. Well, I mean, as a practical matter, if the
16 Commission were to approve a planning area for Arizona
17 Water or Global, such as has been requested here, do you
18 really think as a practical matter there is going to be
19 any other competing utility that thinks it will have an
20 equal chance to take part of that service territory or
21 planning area away from the designated utility company?
22 Or, at a minimum, doesn't it put any competing utility at
23 a significant competitive disadvantage to vie for a given
24 area within the planning area?

25 A. I think what it would say to other utilities,

1 start-up utilities that want to get into the business, is,
2 in order to show them to be a better fit provider for that
3 area, that is the way to determine them, they better be
4 prepared to prepare for that area.

5 The Woodruff decision was within our planning
6 area. It was a self-determined planning area. It wasn't
7 approved by the Commission. It was in an area that we
8 were planning for, and in that case the Commission
9 reviewed all the factors involved. Judge Stern certainly
10 had his view on how that should be decided and made his
11 recommendations accordingly, but ultimately the Commission
12 decided that this other start-up utility was better
13 situated for reasons that it deemed sufficient to make the
14 decision, and they were awarded the CC&N. So we felt that
15 they were at a disadvantage too being a mile away from us.

16 Q. So if you had -- in that instance if you had a
17 preapproved planning area by the Commission, do you think
18 that that would have benefited you in the course of the
19 consideration of the respective bid for that CC&N?

20 A. I think in that case, if you look at the
21 specifics of that case, why I believe the Commissioners
22 decided in that case for the Woodruff Water and Wastewater
23 Company was that it was a utility that was going to do
24 both; it was integrated. And I think that was the
25 determining factor for the Commission, along with the

1 property owner, who was really the developer, you know,
2 developer utility interest, that that was somehow swaying
3 the Commission to go in that direction.

4 But if -- even if the Commission had approved
5 that, Your Honor -- I'm sorry if I'm interrupting --

6 Q Go ahead.

7 A -- if the Commission had approved that as a
8 planning area, I think the decision could have ultimately
9 been the same decision in that case.

10 Q If the Commission were to do this -- I think you
11 have acknowledge this is out of the normal course of
12 Commission approvals. I don't think you have contended
13 anywhere here that there are any prior decisions in which
14 a planning area has been approved for a water company.

15 A I'm not aware of any.

16 Q So you are asking the Commission to do something
17 that it normally does not do, I think.

18 Is that a fair assessment?

19 A Your Honor, I would say yes to that, and the ACRM
20 was something outside of the norm for the Commission to do
21 as well. But I believe the public interest requires
22 sometimes changes from the status quo. And the settlement
23 agreement that is in front of us, which I believe is an
24 unprecedented boundary dispute between two large water
25 providers, I think it is an out-of-the-ordinary

1 circumstance.

2 Q Right, but that was allowed to be applied. That
3 standard of allowing ACRM was applied across the board to
4 all other utilities that sought -- if they so desired and
5 needed funding, they were -- there was certainly no
6 discouragement of that; at least there was some sort of
7 mechanism that was allowed pretty much across the board
8 for companies that want to treat arsenic, were they not?

9 A Your Honor, I know of several. We paved the way,
10 I believe, with the ACRM, but I have been advised recently
11 of a utility who is seeking a similar recovery mechanism
12 and was discouraged by Staff to make a rate case over the
13 complex by including that within the rate case.

14 Q Well, there may be certain specifics instances.
15 Arizona Water was perhaps most greatly affected by the
16 arsenic standards, but in any event, it was a federal
17 mandate again as opposed to a company that is seeking to
18 get an approval for its plans for future growth, which I
19 think you would acknowledge there are certain pretty
20 significant factual distinctions between those two
21 situations?

22 A They are different, yes.

23 Q And on to the point of providing a competitive
24 advantage, isn't this the type of policy decision that
25 would be more appropriately considered on an industry-wide

1 basis before it's done on an ad hoc case-by-case basis so
2 as not to provide a competitive advantage to Arizona Water
3 and Global compared to other water utilities within the
4 state?

5 A. I would make two statements.

6 I think having planning areas would be prudent
7 for every water provider to have, whether the Commission
8 approved them or not. I think it's important to have
9 that.

10 Do I think sometimes a case can propel that
11 forward as a public policy issue? I believe that it can.

12 And I believe that it's important for the
13 Commission to consider the planning areas that both
14 Arizona Water and Global have proposed in this matter. I
15 would hope that they would review the matter and
16 determine, if it's in the public interest, to make that
17 determination, make a positive affirmation of that.

18 Q. Is there anything in the settlement agreement
19 that you cannot -- that you would not be able to do absent
20 Commission approval? I mean, I'm not talking about
21 whether you decide you want to back out because there is
22 not Commission approval, but the items -- and let's talk
23 specifically about the planning area issue.

24 Is there anything -- if the Commission does not
25 approve the planning area as requested for Global and

1 Arizona Water, you are not precluded, are you, from
2 continuing to honor that agreement, I mean, subject to the
3 other party also agreeing to honor the agreement absent
4 Commission approval?

5 A. I would agree that we are not precluded if the
6 Commission weren't to approve the totality of the
7 settlement agreement for the parties to continue, but the
8 parties felt strongly that Commission approval of the
9 settlement agreement and the planning areas was a key
10 component of the settlement. That is why we have
11 requested that the Commission approve that.

12 Q. Well, have you made a decision as the president
13 of Arizona Water that if the Commission does not approve
14 the settlement, that you will back out of the agreement?

15 A. I believe we have the right to consider that, but
16 as we sit here today, to tell you or others that we have
17 determined that if the settlement agreement isn't approved
18 that we would walk away from the settlement and go back to
19 the battle, that decision has not been made. That is
20 certainly provided for in the agreement.

21 Q. And, you know, whether the Commission approves
22 the agreement or not, there still are advantages to both
23 Global and Arizona Water by continuing to honor the
24 agreement in the sense that you have from your primary
25 competitor now entered into an agreement that allows you

1 to plan with some additional assurance as to where future
2 investment should go and those sort of things; correct?

3 A. I would say, Your Honor, that the level of
4 certainty and prudence of the Commission's approval to the
5 settlement agreement -- are there benefits achieved
6 without Commission approval, I believe probably so.

7 Q. Okay. I wanted to just ask you briefly about a
8 couple times, I think, both you and your counsel
9 referenced the nine factors that have been set forth
10 previously, I believe, by a Staff -- by a Staff witness;
11 do you recall that?

12 A. Yes, I do, Your Honor.

13 Q. And I think you spoke to, you thought that that
14 was -- use of those nine factors was preferable to
15 requiring a case-by-case request for service in every
16 single instance; is that right?

17 A. Your Honor, if I may answer it this way. If
18 Staff is saying that you can only receive a CC&N based on
19 a request for service and nothing more, then I think the
20 public interest is not served. I think the nine factors
21 that were raised by Staff in a previous case, I think were
22 well founded, well reasoned. I think they served the
23 public interest. I think many of those factors we achieve
24 in what we are proposing here, what we are requesting
25 here.

1 And I guess that would be my answer to that.

2 Q All right. Do you know if the Commission ever
3 explicitly acknowledged or approved those -- use of those
4 nine factors in a particular case for -- as a part of its
5 assessment of a CC&N extension request?

6 A I don't know if they specifically adopted those
7 nine factors as policy, as formal Commission policy, but I
8 can say that we had CC&N expansions in the past, in
9 particular in the Coolidge area, where we had requests for
10 service and we had an equal amount or greater of adjacent
11 lands, filling in the checkerboard and so forth, that we
12 are consistent with those nine factors.

13 Q Okay. Let's talk just as a general matter,
14 historically, would you agree that there was a Staff
15 position and perhaps even Commission acknowledgment as a
16 matter of policy that these types of factors, such are
17 mentioned in the nine that you've referenced, should be
18 followed as a means of discouraging small start-up utility
19 companies and specifically the rounding out, so to speak,
20 or filling in holes?

21 Was there a point in time historically when the
22 Commission and Staff were trying to encourage larger
23 utilities to serve more acreage or more areas in order to
24 discourage smaller utilities that may not have the
25 economies of scale?

1 A. Are you asking me, Your Honor, if there was a
2 specific policy adopted by the Commission or Staff that
3 those factors, what the purpose of those factors was for,
4 or that it was instituted at a point and then sort of
5 uninstituted or remanded or rescinded at some point?

6 Q. Well, not that there was a rule, but as a general
7 policy matter, at some time in the past was it your
8 understanding that the Commission sought to encourage
9 larger utilities to serve more areas so as to discourage
10 small utilities from popping up and perhaps being
11 undercapitalized and not able to have the same economies
12 of scale and thereby would have perhaps higher rates?

13 A. Your Honor, I don't know specifically if there
14 was ever a policy as such, but it's consistent with what I
15 believe those nine factors meant and were intended to
16 achieve by discouraging the nonviable or extremely small
17 utilities or the gerry-meandering of water providers and
18 start-up utilities to get into the business. Because of
19 the 400 or so water companies regulated by the Commission
20 I would say that the ones that create the most problems
21 for Staff are probably the smallest of the utilities who
22 aren't well capitalized, who aren't well situated to be a
23 water provider.

24 So to the extent that that eliminates those kinds
25 of things from happening, if Staff or the Commission

1 adopted a policy to prevent or prohibit or discourage that
2 from happening, I would say that that would be a good
3 policy.

4 Q Well, before the past few years, let's say, is it
5 your understanding, based on your experience, that the
6 Commission was more inclined to grant larger CC&N --
7 requests for larger areas of services that didn't
8 necessarily -- that were not accompanied by specific
9 requests for service for every single piece of the
10 proposed extension area?

11 A I think, Your Honor, in recent years the trend
12 has been to narrow it more down to the requests for
13 service. I don't believe that is correct.

14 Q Right, and I'm not asking you to agree that it
15 is, but it has been your experience that in recent years
16 the Commission seems to have had trended towards requiring
17 more specific requests for service for each parcel of
18 land; is that correct?

19 A That has been my experience as well.

20 Q And if, in fact, that is what has been or has
21 happened in the recent past, would you expect that the
22 Commission's Staff would recognize that fact as well and
23 seek to pursue policies that were consistent with Staff
24 policies?

25 A Well, Your Honor, if that is an industry-wide

1 basis for requests for service to be the sole determinant
2 for a CC&N extension, then that should be broadly applied
3 to the industry as well.

4 I believe Staff's position in this case is
5 consistent with what you are describing. I don't believe
6 it's correct. I think it's contrary to long-term
7 planning. It serves the immediate and urgent need perhaps
8 but not the long-term need, which -- our company has been
9 in business 54-plus years, and we always try to do things
10 for the long term.

11 Q And again, I'm not asking you to agree with the
12 policy itself; I'm just asking you to recognize or asking
13 if you do understand that that is what the Commission has
14 done in the recent past?

15 A That is my experience, yes, Your Honor.

16 Q And it's interesting. You said that it should be
17 done, if at all -- if that is going to be done on an
18 industry-wide basis, couldn't you extend that same logic
19 to approval of planning areas, that if it's to be done at
20 all, it should be done on an industry-wide basis as
21 opposed to an ad hoc basis in a given case?

22 A Perhaps, but, again, Your Honor, I believe
23 sometimes specific -- I'll call them precedent-setting
24 cases or policy-setting cases can, in fact, influence
25 policy going forward. Hopefully that is the case in this

1 matter.

2 Q Right. I understand. I understand that that is
3 what you are seeking. Again, I'm not trying to in any way
4 undermine your argument. I'm just trying to explore the
5 reasoning behind them. I hope you can appreciate that.

6 A Yes, Your Honor.

7 Q One thing, and I think it was in your testimony,
8 that there was a distinction drawn between this case and
9 the Johnson and Diversified case, where there was a
10 similar request for approval of a planning area that
11 had -- planning areas between two companies that had
12 arisen out of competing bids.

13 Are you familiar with that?

14 A Generally so, yes.

15 Q And could you explain, at least from a policy
16 perspective, why those two cases or fact scenarios are
17 dramatically different?

18 A Well, I think in their case it was a much smaller
19 area that was in dispute, four or five sections, something
20 of that nature. I don't think it had a regional flair to
21 it in any way. I think it was just a dispute among
22 companies trying to claim different areas.

23 I think in this case we have a heavily-contested
24 case, a very large CC&N area and planning area that
25 involves water, wastewater, and reclaimed water, and I

1 think that distinguishes this case from that Johnson
2 Utilities case.

3 Q So really the primary distinction you are drawing
4 is basically the size or magnitude of the two cases?

5 A Not strictly so because I'm not sure the details
6 of reclaimed water or whether, for example, the local
7 municipalities supported in any way the settlement like
8 all the municipalities do in this case. They support the
9 settlement agreement, and the development industry is
10 supporting sort of the lines that were the logical
11 boundaries that were determined. I don't know that that
12 was existing in that case, but it certainly is the case
13 here.

14 Q Are you familiar with that order? Did the
15 Commission attempt to draw any distinction or did it
16 simply say that it declined to approve a private agreement
17 between two entities?

18 A My understanding was the latter that you just
19 described, Your Honor.

20 Q Okay. Let me ask you on the issue of the updated
21 requests for service, and we have heard some discussion
22 about that --

23 A Yes.

24 Q -- today, both from you and from your counsel and
25 Mr. Sabo at least.

1 How difficult is it to get updated requests for
2 service from property owners? Again, just kind of
3 mechanically, you have got some kind of property record
4 that shows who the owner is, and if there is a transfer of
5 ownership, presumably that would be reflected in the
6 County records.

7 Why -- if you could, explain why it's so
8 difficult to get those updated requests for service or --
9 I will leave it at that.

10 A. Well, I think there is a little bit of flux going
11 on with property ownership out there, and the housing
12 market right now is quite slow. I would almost say
13 negative in some ways; customer losses rather than
14 customer growth.

15 So they are not really engaged to a great degree
16 in some respects. Many of them aren't expending any funds
17 to advance the entitling process even if it just involves
18 doing the physical availability or analysis for a
19 certificate. They are simply not -- they are in a status
20 quo, butt in the hatch, minimize your expense mode.

21 Why is it that people don't respond to a
22 telephone call or a letter? I can't answer that. All I
23 can say is that we attempted to notify the property
24 owners, and we did notify them by mail of the proceeding
25 that we have here today, the application that is pending,

1 telephone calls -- multiple telephone call attempts to
2 various property owners. And in some cases we were
3 successful in reaching the property owners, and they were
4 willing to verbally affirm or in writing affirm their
5 request for service.

6 But there are a number of property owners who own
7 very small pieces of property. Some of these are held in
8 LLCs. They are hard to get ahold of from time to time.
9 And so, you know, we did what we could to try to reach
10 people.

11 An example of how difficult it is to reach people
12 sometimes, even when there is a positive thing in front of
13 them, as an engineer for the company from time to time I
14 have had to approach property owners for an easement. And
15 in some cases we had a pipeline going past the entire
16 frontage of the property, and as anybody who has been in
17 the development business knows, if you have water
18 facilities that are going to be installed at no cost to
19 you and they are going to carry your entire property
20 frontage, that seems to be a no-brainer.

21 Where do I assign the easement? In this one
22 case we had a 16-inch pipeline going down a half-mile
23 frontage on some commercial property in Casa Grande. I
24 sent out three letters certified. No response. I made
25 several phone calls. Only when I reached the appropriate

1 person who knew exactly what I was saying did they
2 recognize, oh, you are going to be running a 16-inch water
3 line half mile on my property frontage and I will not have
4 to pay for any of that. When they knew those facts, they
5 signed the easement, but even with the multiple letters
6 and a clear case of, this is a benefit to your property,
7 you get no response.

8 It's hard to explain necessarily the human
9 condition and why people get engaged and don't get
10 engaged. Some of our customers don't even open the water
11 bill until they receive their late notice. That explains
12 a lot.

13 Q. And to build on it, you have indicated that the
14 fact that you would have a main running past property
15 frontage would presumably be a great benefit, a valuable
16 benefit to any property owner because they would have easy
17 and inexpensive access to that water if they decided to
18 develop that property; correct?

19 A. Correct.

20 Q. And would you also agree that getting a CC&N for
21 a given piece of land or area is also a valuable commodity
22 to have for a utility company?

23 A. I think it's a benefit. I think the request from
24 State Land or the letter from State Land spoke exactly on
25 that point.

1 Q Right, because when they go to auction the land,
2 if it already has a built-in provider of utility services,
3 then it provides some value to the sale of the property?

4 A I would agree with that.

5 Q And would you also agree that if the Commission
6 were to approve a planning area, that would provide some
7 additional -- that would provide valuable, perhaps
8 financial advantage, to the utility company?

9 A To the utility company?

10 Q Yeah, maybe not as much as the actual CC&N, but
11 if you had a preapproved planning area, compared to other
12 utilities that don't have a similar planning area approved
13 by the Commission, that there would be some value attached
14 to that planning area approval?

15 A If you are saying a monetary value, I'm not sure
16 I would attach necessarily a monetary value to them. It
17 would provide value to us in that what we were planning
18 for we can plan with more certainty. That is a given, I
19 believe.

20 Is there a benefit to the company in the form of
21 dollars and cents by having a planning area? We make our
22 returns, as you are aware, Your Honor, on our investments
23 and infrastructure that we build to serve the public's
24 needs. And that is our primary monetary benefit, is the
25 building of the infrastructure. Until we build the

1 infrastructure and make an investment, our returns are no
2 greater or less than they are with or without a planning
3 area.

4 Q Well, if you extended that argument, then the
5 CC&N for an unserved area would have no value, and I don't
6 think you are saying that that is the case; right? I
7 mean, you only get your return when you put the plant in
8 the ground and start, you know, recovering investment --
9 recovering on that investment.

10 But if you have a CC&N -- and let's take an
11 example. Let's say that you were to -- a company came in
12 in your certificated area and said, we would like to serve
13 this area; for whatever reason it makes logical sense;
14 and, you know, are you willing to let us provide service?
15 Would you not say, well, our CC&N for this area is worth X
16 amount of dollars; if you agree to pay that, we will agree
17 to let you have that and be part of your CC&N?

18 A We have had that occurrence happen to us in the
19 past as far as somebody wanting to take some of our CC&N,
20 but we were in the business of being a water provider. So
21 in those -- in all of those cases, we said, no, we will
22 not give up our CC&N, but we are ready, willing, and able
23 to serve your project.

24 Q Right, but at some price, perhaps, it would have
25 been enough to decide that it was -- that you could sell

1 it for more than perhaps you could make on a long-term
2 basis providing service to a particular area?

3 A. It would be speculative. In my history with the
4 company that has never occurred.

5 Q. Are you aware of whether there has been instances
6 where that occurred?

7 A. Where somebody had purchased an open CC&N or a
8 service area?

9 Q. Yes, an existing CC&N that has been transferred
10 to another entity in exchange presumably for some monetary
11 remuneration?

12 A. I am, Your Honor.

13 Q. And also, having an approved planning area,
14 although perhaps not quite as valuable, would also have a
15 certain value attached to that.

16 You would agree with that?

17 A. A monetary value?

18 Q. Well, whether it is necessarily specifically
19 quantifiable, as in like a futures investment, perhaps
20 not, but there certainly would be an advantage compared to
21 a company that did not have a similar planning area
22 approved there?

23 A. Is an advantage for the company to have a
24 planning area and approved by the Commission as well.

25 Q. And if the Commission were to decline to approve

1 this planning area, again, the company would not be
2 precluded from undertaking planning for growth in any of
3 its service areas absent that Commission approval; is that
4 correct?

5 A. I would agree.

6 Q. You won't ask the Commission to approve your
7 long-term capital budgets or operating expense proposal,
8 say, over in planning horizon prior to implementing those
9 budgets, do you?

10 A. Typically, no.

11 Q. Except for the ACRM, which we have talked about
12 previously, where there was a specific recovery mechanism?

13 A. And in our annual finance application where we
14 basically demonstrated those facilities or infrastructures
15 that we are going to be funding that year.

16 Q. In your testimony you talked about a ruling by
17 Judge Kinsey that encouraged Arizona Water and Global to
18 engage in settlement discussions; do you recall that?

19 A. Yes.

20 Q. And you use that as a -- that ruling or a
21 suggestion for a basis for, I guess, supporting your
22 request for approval because you had essentially done what
23 you were ordered to do.

24 Is that -- is that correct?

25 A. I'm not sure if I fully understand what you are

1 saying, Judge.

2 Q In your testimony you discuss as one of the bases
3 for justifying approval by the Commission is that both
4 companies were asked to enter into settlement discussions
5 and that you did so and ultimately you came to a
6 resolution of the issues.

7 And, as I understand it, you are using that fact
8 to justify that, hey, look, we did what we were asked to
9 do, so why -- what's the problem with seeking approval of
10 that settlement agreement.

11 A I think in part that is correct, Your Honor.

12 Q I mean, that is one of several bases put forth
13 for why the Commission should approve the settlement
14 agreement?

15 A And I think it made sense. I don't think
16 Judge Kinsey wanted to have a protracted, contested case
17 that dragged on and on and on into multiple discovery
18 disputes and tying up resources with the Commission.

19 Q Right.

20 A So I think there was a benefit, just as there is
21 in lawsuits, to try to reach settlement rather than tying
22 up the court.

23 Q Right. And I understand, but then how does the
24 encouragement of the parties seek settlement necessarily
25 translate to a justification for why the Commission should

1 approve a private agreement for something that it has not
2 done in the past? I guess that is the question. Why do
3 you pull that out as a justification for your argument
4 that the Commission should approve the settlement
5 agreement?

6 A. Well, Judge Kinsey believed it was better for the
7 parties to settle, and in the matter before her was a
8 contested CC&N matter. Wouldn't the Commission want to
9 know what the ultimate decision or agreement was of the
10 parties and whether they agreed with that ultimate
11 decision or not.

12 I see it consistent with -- it wouldn't be the
13 sole reason. Here, go out, and this is the agreement that
14 I want you to reach. But we did as asked. We did meet,
15 and we did try to reach settlement. We ultimately did
16 reach settlement. I think it resolves a number of the
17 issues that the Commission should find of interest to
18 decide.

19 Q. Okay. And you have certainly advocated in the
20 proceeding the advantages to the public interest, I think,
21 of the having these planning areas?

22 A. I definitely believe that the public interest is
23 served by having planning areas.

24 Q. Okay. And if that is the case, why shouldn't the
25 Commission not encourage or even demand that every water

1 utility file perhaps annual or semiannual dockets,
2 applications or cases that set forth proposed planning
3 areas for Commission approval? I mean, is that something
4 that should be done in your mind?

5 A. I don't know if it's something that extensively
6 that should be done. Should the Commission require
7 planning areas, perhaps.

8 In this case it was a large area that was in
9 front of the Commission, and I think it was -- it would be
10 prudent for the Commission to review and to decide if
11 those were prudent planning areas or not. If it was in
12 the public interest for the entities to plan for those
13 areas or not, to have a requirement --

14 I mean, if you are looking at a small satellite
15 system where there is no other utility around it, and it's
16 one entity out there, perhaps having a planning area in
17 context with nobody else out there to compete against or
18 to sort of find out who is going to be serving where,
19 maybe that is not as important in those cases. I think it
20 is important in this case. I think it might be important
21 in the Johnson Utilities case in the decision.

22 Q. Well, and there could be others where there were
23 various small utilities within a given area that if a
24 large development were to be proposed somewhere in between
25 the service territories, you may very well have competing

1 bids.

2 A. Uh-huh.

3 Q. And I guess the question is, if it's such a good
4 idea and you are suggesting that it is, just in a general
5 sense, and the Commission were to encourage companies to
6 do so, to seek approval of planning areas, would that not,
7 in fact, diminish any suggested reductions to Commission
8 Staff time, at least to review those types of filings by
9 various water and sewer companies.

10 A. If the Commission required somebody to do that,
11 then obviously there would be an increase of filings and
12 more administrative load for the Staff and the Commission.
13 I don't think that is required.

14 Q. Okay. But if the Commission were to do as you
15 are requesting in this case and to approve these planning
16 areas, do you believe that companies will see that as a
17 green light, so to speak, to -- at least some companies to
18 come in and seek approval of planning areas such that it
19 could -- and especially in areas where there might be
20 intervenors by competing utility companies, would that not
21 potentially increase the load on Commission Staff and the
22 Commission itself?

23 A. It could. I don't think it necessarily has to.
24 I think some of the benefits to have approved planning
25 areas could be to diminish or reduce Staff scrutiny of

1 infrastructure built in the future, knowing, for example,
2 what -- having a five-year capital improvement plan, for
3 example, is something that the Commission doesn't require
4 now. It's something that the cities typically have in
5 place that are approved by their councils. Those are
6 prudent things for utilities to have.

7 Q But, again, those utility companies should, as
8 part of their obligation to serve in a protected monopoly
9 service territory, those are decisions and reviews that
10 should be undertaken anyway by the management of the
11 company, shouldn't it?

12 A I agree, but I believe -- I think if the
13 Commission knew more about what those plans were, they may
14 be able to project where there may be problems in the
15 future.

16 Q Okay. And you think Staff and the Commission
17 have the resources to undertake a regular review of 400
18 companies and to approve planning areas?

19 A Your Honor, if you are asking me if all 400
20 companies or multiple companies were coming in with
21 planning areas, if Staff would have sufficient resources
22 to process them, as you are aware even in our rate case,
23 even that couldn't be decided or acted upon within the
24 time frames in the rules and additional time was granted
25 for that.

1 So this is the time when I think Staff resources
2 are less rather than more, and I don't see that situation
3 improving in the next few years.

4 But if you want to make an omelet, sometimes you
5 have to drop a couple eggs to make the process towards
6 what I think is a prudent thing for utilities to have.

7 ACALJ NODES: Okay. I won't belabor it anymore
8 than I have.

9 Let's see. Mr. Hains, do you have any questions
10 based on my questions before we go to redirect?

11 MR. HAINS: No. Thank you, Your Honor.

12 ACALJ NODES: Mr. Sabo, did you have any
13 questions?

14 MR. SABO: No, Your Honor.

15 ACALJ NODES: Okay. Let's see. Are you going to
16 have any redirect, Mr. Hirsch?

17 MR. HIRSCH: I just have one question or one
18 narrow area that was suggested by the answers.

19 Would you like me to get them out of the way?

20 ACALJ NODES: Let's go ahead and finish up then.

21

22 REDIRECT EXAMINATION

23

24 BY MR. HIRSCH:

25 Q I think it will work.

1 Mr. Garfield, I just want to simply have you
2 elaborate on one area that was mentioned, I think, as part
3 of an answer you gave either to Mr. Hains or Judge Nodes,
4 and it related to the reclaimed water tariff. This was an
5 issue, I'm recalling, that was brought up by one of the
6 public commenters here. And I believe it was Ms. Cheney,
7 who represented the Eldorado folks, who are 5, 6, and 7 on
8 Exhibit A-3.

9 And you mentioned the word "pass-through." Can
10 you explain what the current company's tariff is and at
11 least at present what the company's plans would be
12 regarding rates for reclaimed water service?

13 A. Well, the existing -- it's actually called the
14 "Treated Effluent Tariff" that we have in the Gold Canyon
15 area. Basically those are pass-throughs. Whatever the
16 rate for that commodity is -- and in that case it's Gold
17 Canyon Sewer Company -- the rate design is approved by the
18 Commission. The agreement effectively takes that price
19 paid and passes that exact cost on to the consumer with
20 very little markup on that commodity to the consumer.

21 We have drafted a similar reclaimed water tariff
22 that we are looking for on a companywide basis. I have
23 shared that with Mr. Olea in the last couple weeks. It's
24 a similar form of tariff that we proposed in the past, and
25 it's designed as a simple pass-through of the cost of

1 purchasing reclaimed water and delivering it to the user.

2 Q. As you sit here today, would you anticipate that
3 something along a similar approach would be applicable if
4 the Commission were to approve the settlement agreement
5 and reclaimed water were to be served as part of paragraph
6 7A of the settlement agreement?

7 A. That is precisely why we drafted such a tariff,
8 and that is the tariff that we are going to run with.

9 MR. HIRSCH: Thank you.

10 ACALJ NODES: Any further questions?

11 (No response.)

12 ACALJ NODES: Okay. Mr. Garfield, thank you for
13 your testimony, and you are excused.

14 THE WITNESS: Thank you.

15 ACALJ NODES: We will take a ten-minute break at
16 this time, and then we will come back for Arizona Water's
17 next witness.

18 (Whereupon, a recess was taken from 3:02 p.m.
19 until 3:24 p.m.)

20 MR. HIRSCH: Arizona Water next calls
21 Mr. Fredrick Schneider to the stand.

22

23

24

25

1 FREDRICK K. SCHNEIDER,
2 called as a witness herein, appearing on behalf of Arizona
3 Water Company, having been first duly sworn, was examined
4 and testified as follows:

5

6 DIRECT EXAMINATION

7

8 BY MR. HIRSCH:

9 Q Can you state your full name for the record,
10 please.

11 A My name is Fredrick K. Schneider.

12 Q And what do you do for a living?

13 A I'm the vice president of engineering for Arizona
14 Water Company. I receive their planning, budgeting,
15 design, and construction of infrastructure facilities.

16 Q And how long have you been so employed?

17 A Since 2007.

18 Q And before that time did you serve a similar role
19 for other utilities?

20 A Yes. I actually have over 20 years of experience
21 in water and wastewater, and I have worked for a couple
22 different municipalities between City of Tucson and
23 Arizona American Water and more recently Arizona Water
24 Company.

25 Q And are you a registered professional engineer?

1 A. Yes, I am.

2 Q. And do you hold any certifications from ADEQ?

3 A. Yes. I'm a grade III certified operator in water
4 and wastewater.

5 Q. In connection with the case that brings us here
6 today, Fred, were you asked to prepare some direct
7 examination on the engineering aspects of the application
8 for CC&N that is at issue?

9 A. Yes, I was.

10 Q. And we have, if Mr. Garfield left them up there,
11 placed a stack of exhibits.

12 A. Yes.

13 Q. The bottom portion of which should include
14 Exhibits A-8 and A-9.

15 A. That's correct.

16 Q. Look at Exhibit A-8. These have not been
17 circulated to all the parties because they got them
18 through the docketing copies.

19 Is Exhibit A-8 the prefiled direct testimony that
20 you personally prepared, the questions and answers?

21 A. Yes, it is.

22 Q. And let me, while we're at it, have you look at
23 Exhibit A-9.

24 Is that the rebuttal testimony for this
25 proceeding that you prepared, the questions and answers?

1 A. Yes, it is.

2 Q. And do those exhibits also contain with the
3 direct examination, A-8, Exhibits FKS-1 and 2, and with
4 the rebuttal testimony, A-9, Exhibit FKS-3?

5 A. Yes, they do.

6 Q. And in both circumstances of A-8 and A-9, would
7 those be the same answers you would give today in the live
8 hearing as if you had been asked them when you were
9 appearing live and under oath?

10 A. Yes, they would be.

11 Q. We are going to talk about a correction to one of
12 the exhibits, but do you have any corrections to any of
13 the answers that are set forth in the prefiled testimony?

14 A. No, I do not.

15 MR. HIRSCH: Okay. We move Exhibits A-8 and A-9.

16 ACALJ NODES: Any objection?

17 MR. HAINS: No objection.

18 ACALJ NODES: A-8 and 9 are admitted.

19 (A-8 and A-9 were admitted.)

20 Q. BY MR. HIRSCH: Now, I want to clarify a couple
21 of the exhibits that were included with your prefiled
22 testimony.

23 First FKS-1, which is a document that we have
24 talked about a little bit in opening statement and during
25 Mr. Garfield's testimony. It's entitled Pinal Valley

1 Water System. We didn't bring a blowup on this. We will
2 stick with A-3 to illustrate most of your comments.

3 But can you give us the date of FKS-1 and
4 specifically whether it was before or after the settlement
5 agreement with Global?

6 A. The date of FKS-1 was last revised on August 2nd
7 of 2008 -- I'm sorry -- August 12, 2008, and specifically
8 the settlement agreement was entered into on May 15th of
9 2008.

10 Q. So FKS-1 is -- is it the most current Arizona
11 Water Company Pinal Valley Water Master plan?

12 A. Yes, it is.

13 Q. And does it reflect the adjustment of the
14 company's planning boundaries to comport with the planning
15 areas as described in the settlement agreement?

16 A. Yes, it does.

17 Q. All right. And FKS-2, submitted with your
18 prefiled direct appears to be a design report.

19 Can you explain in a little more detail what the
20 date of that was and what -- or why you had the company
21 commission that report?

22 A. Yes. The company commissioned this report to
23 prepare a detailed design report of the projected demands
24 and infrastructure requirements to serve their planning
25 area, in particular their CC&N application as originally

1 filed, and that report was prepared and completed July 7th
2 of 2006.

3 Q So the FKS-2 report actually addresses a design
4 report for purposes of the original application in this
5 proceeding presettlement; right?

6 A That would be correct.

7 Q Now, we turn to your rebuttal, Exhibit A-9, and
8 we see a third and final exhibit, FKS-3. And in the
9 version that was sent down here for docketing, it is a
10 one-page map of Pinal Valley water system.

11 Do you have that in front of you? You may have
12 already swapped it out of the notes.

13 A I already took that out and have the correct one.

14 Q Okay. I will avow for the record, it's in
15 evidence now, that FKS-3, Fred, is dated 6/19/07. It
16 appears to be the same master plan that is in FKS-2, the
17 original design report.

18 Did you intend to have a different FKS-3 to have
19 on the record for purposes of your rebuttal testimony
20 here?

21 A Yes. What I intended to submit was the revised
22 design report for the new planning area, which is our CC&N
23 area, which is part of this hearing here, which we
24 completed February 26th of 2009. And that report should
25 have been included in its entirety.

1 Q Now, let me ask you to turn to the final Arizona
2 Water exhibit in this proceedings, for now at least, which
3 is A-10.

4 Tell us what that document is.

5 A That document is the correct -- it's a document
6 that should have been attached to my rebuttal testimony,
7 which is the revised design -- detailed design report
8 encompassing the current contemplated certificated area
9 which lies west of the company's Casa Grande certificated
10 area and also lies south of the company's Stanfield CC&N.

11 Q And is the Pinal Valley master plan diagram in
12 A-10, I think it's Exhibit 2 within A-10, identical to
13 FKS-1, which you described as being the most current Pinal
14 Valley Water master plan map?

15 A Yes, it is.

16 Q And can you summarize for us -- well, let's at
17 this time -- summarize for us what the A-10 design report
18 did.

19 A The A-10 design report took the previous study,
20 which was completed in 2006, and updated it for the
21 current application for CC&N in the area that I described.
22 And what we did was we went through and revised it with
23 the current demand information from July of 2008, which is
24 our peak summer demand, and we went forward and projected
25 what our demands would be and what the infrastructure

1 required would be to provide service to that CC&N area.
2 And we looked at it for a duration of approximately
3 50 years in ten-year increments and prepared a detailed
4 cost that would be required to provide that
5 infrastructure.

6 MR. HIRSCH: I want to make sure, Judge Nodes,
7 that you have a copy of A-10. It was part of that pile I
8 had over to the left that was marked today. Sorry about
9 that.

10 ACALJ NODES: Okay. I got it.

11 MR. HIRSCH: By definition you did have it
12 previously; it was part of the data requests but --

13 ACALJ NODES: It was buried here.

14 MR. HIRSCH: That's okay. Since we swapped it
15 out for another exhibit, I could see you pawing through
16 papers up there.

17 ACALJ NODES: Yeah.

18 Q. BY MR. HIRSCH: Now, if you turn to page 2 of
19 Exhibit A-10, there is an introduction and a date.

20 Can you confirm for us, was this report updated
21 and performed to respond to a Staff data request?

22 A. Yes. In particular it responded to Staff's data
23 request BG 8.5, which was dated January 30th of 2009. And
24 we completed the report February 26th of 2009, and thereby
25 docketed it as part of that data request.

1 Q So the earlier design report that was FKS-2 is
2 essentially replaced by Exhibit A-10 in these proceedings?

3 A Yes. Essentially FKS-2 superseded FKS-2 as the
4 design report.

5 Q Now, you are using the lingo in the way you
6 proposed before the Xerox people got ahold to it and sent
7 down the wrong exhibit. It's actually A-10, just so the
8 report is clear, is the corrected and current design
9 report; correct?

10 A That's correct, A-10.

11 Q Realizing in your mind it's FKS-3.

12 And incidentally, that is a fair follow-up
13 question.

14 When you refer to FKS-3 in your rebuttal
15 testimony, which is Exhibit A-9, you are intending to
16 refer to what we now know as Exhibit A-10 in these
17 proceedings; right?

18 A That would be correct.

19 MR. HIRSCH: Now we move Exhibit A-10.

20 ACALJ NODES: Objection?

21 MR. HAINS: No objection.

22 ACALJ NODES: Okay. A-10 is admitted.

23 (A-10 was admitted.)

24 Q BY MR. HIRSCH: I will be fairly brief because
25 your testimony is relatively straightforward in both

1 direct and rebuttal, but I want to ask a few questions as
2 it relates to some matters that have been raised today in
3 the testimony.

4 We have Exhibit A-3, as you saw here during
5 Mr. Garfield's testimony, blown up. I will ask you a few
6 questions about that.

7 First, a question that Judge Nodes asked to
8 Mr. Garfield, and that is, in your experience from the
9 engineering perspective, how difficult is it or how
10 difficult could it really be to simply get together a set
11 of written requests for service from folks in an area such
12 as this in Western Pinal County?

13 A. On the surface it seem to be a very simple
14 process, but as you dig into it, as we were tasked with
15 that requirement, it becomes very difficult. As we
16 started to research the property owners that would be
17 signing those requests for service, they become LLCs of
18 other LLCs, and we spend an enormous amount of time trying
19 to track down these individual LLCs.

20 And in one particular case, by time -- we had
21 spent hours, probably days tracking down the actual
22 signatory for the LLC, it ended up being a person in India
23 that we had to contact to try to get them to sign this
24 document. And as we discovered in the process, numerous
25 times, when you finally do reach the individual who is

1 required to sign a request for service, they don't
2 understand our business and don't understand what we are
3 asking them to sign and why it would be advantageous for
4 them to sign it. So it really does become an arduous
5 process.

6 Another instance we ran into in requesting a
7 request for service was a family trust that owned the
8 property. It ended up being that we had to receive -- if
9 we were going to get a request for service, a letter
10 signed by 12 individuals scattered across, I believe, five
11 different states across the United States to actually get
12 that letter signed by the trustee. So those become very
13 difficult to obtain.

14 Not to mention, many of these parcels out there
15 are small remnant parcels -- 5, 10, 20 acres -- so
16 literally we are trying to track down hundreds of
17 individuals or entities requiring multiple signatures to
18 get requests for service.

19 So as we found out, it became a very arduous,
20 difficult process to weigh through.

21 ACALJ NODES: If I may interrupt just on this
22 point, Mr. Hirsch.

23 MR. HIRSCH: Sure.

24 ACALJ NODES: If that is the case, doesn't that
25 somewhat argue in favor of the Staff position then, that

1 if it's so difficult to get anyone to acknowledge that
2 they actually want service, how -- why should the
3 Commission interpret that as an affirmative response in
4 favor of a request for service?

5 And I'm not talking about the policy of filling
6 in or rounding off; you know, that is entirely separate
7 matter. But if we were to apply the standard that you
8 need a current request for service in order for the
9 Commission to approve a CC&N area, why if it's so
10 difficult to get ahold of someone to affirmatively say I
11 want service from Arizona Water, why should the Commission
12 not consider that to be essentially a nonrequest?

13 MR. HIRSCH: Judge, if I may ask one question.
14 You may have misunderstood the tenor of my question and
15 his answer.

16 Q BY MR. HIRSCH: Mr. Schneider, is it correct that
17 your answers were identifying the circumstances 1 through
18 19, merely trying to get the Staff-requested update from
19 people who had already requested service from the company?

20 A That is correct.

21 ACALJ NODES: Well, I don't think that changes my
22 question at all. I used the term "a current request for
23 service," and why -- even if -- because -- well, it
24 certainly could be the case that there had been a change
25 of ownership of property. I'm sure you ran into that at

1 some point during your efforts to find these various
2 property owners; is that right?

3 THE WITNESS: Yes, we did.

4 ACALJ NODES: And let's take an example. Let's
5 say a previous property owner made a request for service,
6 written or oral, and then during the pendency of this
7 proceeding, three years later there is a new property
8 owner and what if they say, well, we don't want Arizona
9 Water; we want Global or we want the City of Casa Grande
10 or, you know, whatever? Why should the Commission -- or
11 there is no response? Why should the Commission not take
12 into consideration that you were not able to obtain an
13 updated current request for service? Why should the
14 Commission accept that old request and not require a
15 current request?

16 THE WITNESS: Well, I guess two reasons -- two
17 things I would like to point out. As we were contacting
18 these individuals we finally drew the line on roughly how
19 many we were going to try to track down. We focused on
20 the largest property owners in the area in particular and
21 decided not to pursue the small 3-, 5-, 10-acre parcels.

22 I would like to point out on top of that, of all
23 the individuals that we requested and spoke to, we have
24 not received any objections to us being the water provider
25 by anybody, and to this date we have not received any, I

1 guess, opposition to the service that we are applying for
2 as part of the CC&N. So we have received no opposition
3 whatsoever in our entire application.

4 ACALJ NODES: Now, Mr. Sabo, I think, referred to
5 the fact that they now have something like 80 percent of
6 updated requests in their requested service area.

7 Do you have a similar percentage number of
8 current or were you dated --

9 THE WITNESS: Not off the top of my head. I
10 would have to go through and calculate the areas that we
11 requested versus the areas we are asking for to give you
12 an exact percentage. We would get that number.

13 ACALJ NODES: And if you could get it both on a
14 percentage of the total acreage as well as the total
15 percentage of the total property -- number of property
16 owners.

17 THE WITNESS: Okay.

18 ACALJ NODES: Okay. And if you could make that
19 calculation and provide that somewhere in the record.

20 THE WITNESS: Sure.

21 MR. HIRSCH: We will try. The latter of those
22 two is virtually impossible when you are talking about,
23 you know, quarter-acre slivers here and there, but we
24 understand what you are looking for.

25 ACALJ NODES: Well, didn't -- in accomplishing

1 publications and mailing, didn't you have to have a list
2 of property owners?

3 MR. HIRSCH: We did. We could gauge it off of
4 that.

5 ACALJ NODES: Okay.

6 MR. HIRSCH: And that is not that old.

7 ACALJ NODES: Yeah. That was just last fall. I
8 think we had a -- didn't we have a new publication
9 mailing -- or it wouldn't have been publication, I guess.
10 I can't remember what it was.

11 MR. HIRSCH: I think it was both.

12 ACALJ NODES: Yeah, okay. So you have to have
13 some kind of master list of property owners, I assume,
14 because you had to mail directly to them. So if you take
15 that --

16 MR. HIRSCH: We can do that.

17 ACALJ NODES: I just wonder because it's possible
18 that there could be 1,000 property owners and you only
19 have 10 percent of the updated requests on the number of
20 property owners but it includes 90 percent of the acreage.
21 I would like to know for the record, you know, how those
22 kind of work out.

23 MR. HIRSCH: Okay. We will see if we can get
24 that done by the close of the hearing, but if not by then,
25 we will do it in affidavit form --

1 ACALJ NODES: That's fine.

2 MR. HIRSCH: -- post submittal and get that to
3 you.

4 ACALJ NODES: Thank you.

5 MR. HIRSCH: Let me ask some follow-up questions
6 from your questions, Judge Nodes. Those would be
7 appreciated.

8 ACALJ NODES: Sure.

9 Q BY MR. HIRSCH: Let's take some of the
10 hypotheticals that the judge was asking you about, which I
11 think rhetorically have an underlying premise that it is
12 the individual property owner that determines who gets to
13 serve them water as opposed to the overall public interest
14 as measured by engineering, convenience, fairness in
15 rates, and depth of service in the community, et cetera,
16 which is an area that we will debate in post-hearing
17 briefs.

18 But let's, as a fact, ask you these questions.

19 Are you aware of a single instance currently in
20 the package, and it's one of the exhibits here, of the
21 written requests for services where anyone that were
22 contacted verbally or by letter or were reached out to by
23 publication contacted Arizona Water Company and said we
24 don't want Arizona Water; we want Robson; we want Jones
25 Water Company; we want Global; we want somebody else? Are

1 you aware of a single instance of that?

2 A. Not a single instance.

3 Q. Okay. Now, we heard Ms. Cheney from Eldorado
4 today talk about -- frankly her letter speaks for itself
5 in the package -- her earlier desire, but did you
6 understand her to say that given the settlement agreement
7 that they were happy to be served by Arizona Water?

8 A. That's correct.

9 Q. And do you count on Eldorado in the company's
10 legend and diagram A-3 as being a written request for
11 service from the company?

12 A. Yes, we do. They were included as item Nos. 5,
13 6, and 7.

14 Q. So if we don't see a colored space or a
15 description of acreage over in the left, it's not that
16 somebody wants to be served by someone else; it's that you
17 just didn't hear from them despite efforts that you
18 described to reach out to them?

19 A. That is correct.

20 Q. And just so the record is clear, you are unaware
21 of a single instance where anyone objected to Arizona
22 Water Company as being their water provider without maybe
23 mentioning a preference as to who would be their water
24 provider? Is there anyone in that category?

25 A. I'm not aware of any instance of anyone in

1 opposition to us being the water provider, Arizona Water,
2 or emphasis on some other provider.

3 Q All right. Let me ask you a question perhaps
4 underlying some of the questions that were asked by
5 Judge Nodes.

6 If we look at the area that starts in the lower
7 right of A-3 -- I will go to the podium here so I can
8 point. Here is the area basically wrapping around the
9 company's existing CC&N, as it was described by
10 Bill Garfield. And we see areas where there is a lot of
11 color filled in, which the legend tells us are current
12 requests for service, and then we see some areas here that
13 aren't filled in.

14 Can you tell us, Mr. Schneider, if there is --
15 what in your view do you take away from the fact that
16 there is an area without a request for service? How is it
17 in the public interest for Arizona Water Company to get a
18 certificate of convenience and necessity when it did not
19 receive or didn't hear from the owners of the property,
20 say in this gap that I'm signifying here, which is
21 basically the areas closer to the Tohono O'odham Indian
22 Reservation and down near the boundaries of what is known
23 as the Sonoran National Monument established by President
24 Clinton as he was leaving office?

25 A I want to point out that we have not received any

1 opposition from any of those individuals.

2 On top of that, it is part of our overall master
3 plan for that area of building an innovative grid to
4 provide service to those properties down there in lieu of
5 trying to provide service through individual, isolated
6 facilities that don't have the proper interconnection for
7 a larger facility or may not have the redundancy in those
8 systems.

9 Q Okay. I will get to that in the minute. Let's
10 take perhaps what are the most understandable of the
11 factual circumstances here.

12 I'm going to turn your attention to the land
13 between Montgomery and Midway on the south side of Hanna
14 Road, just above the area being developed by Bingham Land
15 Arizona, LLC.

16 Okay. So we have a little sliver, where I have
17 my light pen right now, and then a little 40-acre part
18 just off the upper left of the D. And we have Arizona
19 Water existing certificate immediately contiguous to the
20 north.

21 Am I reading the map right as to the current
22 status of the certificate?

23 A Yes.

24 Q All right. From an engineering perspective, does
25 it make any sense for a stand-alone start-up water company

1 to come in and apply for and provide service to what
2 looked to be a 40-acre shard of property there and maybe a
3 misshapen 20-acre shard in the upper right of the D as we
4 see it along Montgomery Road?

5 A. From an engineering perspective I don't see how a
6 company could come in and be a start-up water provider in
7 such a small area and be competitive either from the rate
8 standpoint or just from an infrastructure cost standpoint
9 in providing that service.

10 Q. In your experience in the field, Mr. Schneider --
11 not that this necessarily is dispositive to the Commission
12 currently, what has been your experience of the custom and
13 practice of the Commission when an applicant delivers
14 current expressions of interest in being served in an area
15 immediately contiguous to an existing certificate that has
16 a few holes left in it for which there is not a current
17 written receipt of current request for service?

18 A. Historically those have been included in the CC&N
19 approval process to make sure that those small little
20 remnant parcels are not left out in a specific providers
21 service area.

22 Q. From a purely engineering perspective as it
23 relates to the public interest and eventual rates and fire
24 flow safety and pressure and delivery and quality of the
25 water being treated, what benefits do having, say, two

1 sections of land to infuse with your system versus say
2 running a pipe along Selma to connect Stanfield and Casa
3 Grande have?

4 A. Well, what we try to do in our planning process
5 is create an integrated grid of water lines and facilities
6 to provide that backup and redundancy in service to those
7 parcels.

8 Q. And that is a lot of highfalutin engineering
9 terms for a liberal arts guy here.

10 What do you mean an integrated grid? How much
11 land do you need for that and what benefits does that give
12 you?

13 A. As I included in my testimony, if we look at
14 small individual parcels, they require -- each parcel
15 requires the adequate fire flow, adequate storage and
16 adequate well and redundancy in each one of those parcels.
17 So as you start to combine those into larger integrated
18 parcels of land to provide service to, you don't have to
19 have the redundancy in fire flows or provide a single
20 storage tank. Those wells, that being small redundant
21 wells, become larger-capacity wells, and typically
22 redundancy is provided from the company's existing service
23 area in lieu of a stand-alone facility that has to have
24 all of its own redundancies and individual treatment
25 facilities and such.

1 Q In your experience in the utility field, have you
2 had instances where the physical circumstances on the
3 ground were that there was a single transmission main
4 serving an isolated CC&N area?

5 A Yes, I have.

6 Q And can you describe for the record what types of
7 problems that creates in terms of reliable flow to an area
8 from time to time?

9 A Typically with long single-source lines like
10 that, it will have water quality issues in the sense that
11 the aged water becomes fairly aged. The pipelines
12 typically are sized sufficient for fire flow. But in the
13 event of providing day-to-day service, those losses in
14 that pipeline are fairly low and that water becomes very
15 aged. In essence, the time for that water molecule to
16 move from one end of the system and come out at the
17 customer's faucet may take days or sometimes even weeks
18 for that water to come out, which makes it difficult to
19 maintain chlorinated residuals.

20 Also single lines create the problem in
21 redundancy. In the event you have a main break on a water
22 line and you have to go in and prepare -- a repair or
23 routine maintenance, that outage will affect a larger
24 group of customers than if that water line was looped,
25 whereby service could be provided from an alternative

1 water line from a grid service versus that single dead-end
2 line.

3 Q So if we look at, in the before situation, before
4 the application for the extension of this CC&N, I think we
5 previously identified that the gap between the existing
6 Casa Grande CC&N of the company and the Stanfield 16
7 section, four-by-four certificated area, is this one-mile
8 stretch along Selma Road. I indicated it's between
9 Anderson and Russell; is that right?

10 A That's correct.

11 Q And although it would be physically possible --
12 well, would it be physically possible, assuming you could
13 achieve the easements or right-of-way, to run a line to
14 connect Casa Grande and Stanfield along that area?

15 A It would be possible, but it would not be the
16 desired solution.

17 Q Does having a certificate granted to fill in this
18 gap down to the Tohono O'odham Indian Reservation boundary
19 give you the engineering flexibility you desire?

20 A That is exactly what we are looking for, is the
21 ability to provide service and interconnect those two
22 systems through those ultimate developments to provide the
23 redundancy between our system and the Casa Grande area,
24 the system in Stanfield as well as interconnection of
25 those two through those developments that you see on the

1 map.

2 Q Let me ask you this question, Mr. Schneider, from
3 an engineering perspective.

4 Let's say Staff has its way and a certificate is
5 granted that literally is on the outlines on Exhibit A-3,
6 the colored areas as I've indicating here. And for the
7 record, I was outlining the 14 Hacienda acre there,
8 No. 14, and then C and then B. And then we have a little
9 gap before we get to developer No. 12, which is
10 BevNorm Olive.

11 Let's say the certificate is granted and it is
12 literally confined to the exact boundaries of the letters
13 you were able to chase down, can you address what the
14 relative attractiveness to a water company would be to
15 come in, with Arizona Water serving to essentially the
16 northwest and southeast of that area, and commence a new
17 application and a start-up water company?

18 A In essence, that would block off the ability to
19 take the system to the west and east and interconnect
20 those two to a new start-up utility. That would actually
21 somewhat cut off our ability of interconnecting those two
22 facilities.

23 It would probably not be cost effective for a
24 start-up utility to come in in that area and build all the
25 required facilities when they could simply extend the

1 facilities that we would have in place for those
2 developments into their project.

3 Q In your experience, would the prospect of a
4 potential to serve a kind of island area, such as I'm
5 indicating here -- again, assume the CC&N were prescribed
6 literally by a written request for service, would that
7 attract a -- well, what type of utility, in your
8 experience, if you can answer, would that attract?

9 A Most likely it would attract a developer-type
10 utility, one that doesn't expand past that specific piece
11 and also lacks the capital ability to fund long-term
12 improvements, from my experience.

13 Q In your experience have you seen
14 developer-controlled utilities such as that after they
15 have sold out their developments, pick up their toys and
16 go home, essentially leaving the water utility behind?

17 A I think the state has many of those utilities
18 throughout the entire state. Typically those lack the
19 capital ability to raise capital and fund infrastructure
20 needed for those utilities.

21 Q Okay. Well, I'm probably verging on belaboring
22 this point a bit, if I look at Judge Nodes' body language,
23 but I think it's important for purposes of the record.
24 For the rest we will rely on your prefiled direct and
25 rebuttal, which provides additional insights into that.

1 That is all I have.

2

3

EXAMINATION

4

5 BY ACALJ NODES:

6 Q And just so I'm absolutely clear, Mr. Schneider,
7 did you indicate -- and maybe I missed it -- where your
8 interconnection is going to occur between the Stanfield
9 system currently and the Casa Grande system, along what
10 alignment you expect it or you haven't decided exactly
11 where that connection is going to occur?

12 A No. I believe my exhibit, FKS-1, actually
13 details what that interconnection will look like. And
14 what it actually is is a series of pipelines actually
15 going down the area between Selma and about four miles
16 south and over back up through these developments.

17 So actually it will be a grid of pipeline that
18 they are interconnected to, not a single pipeline down a
19 single road.

20 Q Okay. Okay. And then eventually you get over to
21 the existing CC&N area for Casa Grande through that hatch
22 work of services to these requesting developments?

23 A Correct.

24 Q And just so I'm clear, the map on A-3, which is
25 represented on the board, the black cross-hatching is the

1 requested CC&N area in this -- in one of these dockets; is
2 that correct? In other words, you are asking for a CC&N
3 for the entirety of the black cross-hatched area that
4 includes various developments that you have identified
5 with various letters and numbers?

6 A. Correct. If I may, basically if we start up in
7 this corner here, basically it comes up along this purple
8 boundary. It comes down here along this line here, up,
9 rounded here, and I think across here and up.

10 Q. Okay. And then in addition to the actual CC&N
11 for that area that is represented on A-3, you are also
12 requesting approval of the planning area that is
13 represented in Exhibit B to the settlement agreement; is
14 that correct? It's outlined in blue?

15 A. That's correct.

16 Q. Okay. I just wanted to make sure I have that.

17 ACALJ NODES: Okay. And, Mr. Hirsch, you were
18 finished with your direct examination?

19 MR. HIRSCH: Yes, thanks. And, if I may, one
20 question suggested by what you just asked.

21 ACALJ NODES: Sure.

22

23 DIRECT EXAMINATION (CONTINUED)

24

25 BY MR. HIRSCH:

1 Q Mr. Schneider, is there a similar map to FKS-1
2 that is in the A-10 design report?

3 A Yes, there is. That would be, I believe,
4 Exhibit 2, which is about halfway between the front and
5 the back.

6 MR. HIRSCH: Judge, we might recommend this one
7 that is in evidence. It has a little clearer depiction of
8 the planned transmission lines and the diameter thereof
9 than the exhibit we were looking at earlier. That is all
10 I have.

11 ACALJ NODES: Okay. And the planned -- okay. I
12 see. All right. Thank you.

13 Mr. Sabo, any questions for Mr. Schneider?

14 MR. SABO: No, Your Honor.

15 ACALJ NODES: Mr. Hains?

16 MR. HAINS: Yes. Thank you.

17

18 CROSS-EXAMINATION

19

20 BY MR. HAINS:

21 Q Good afternoon, Mr. Schneider. How are you?

22 A I'm doing very good.

23 Q One thing that I observed inside your testimony,
24 your rebuttal testimony is you described Staff's position
25 as giving rise to a concern about patchwork CC&N

1 gerry-meandering, I think it's been called by another
2 witness earlier today.

3 Do you recall that testimony?

4 A. Yes, I do.

5 Q. And one question I have for you is, have you had
6 a chance to evaluate the portions, based on Staff's
7 report, that Staff is actually recommending be granted to
8 Arizona Water?

9 A. I believe what they are recommending is specific
10 areas that have requests for service only.

11 Q. Right. Have you had a chance to compare that and
12 relatively where the actual locations are of the specific
13 portions that Staff is recommending to be approved?

14 A. I'm not sure I quite understand the question.

15 Q. Okay. Up there do you have with you an exhibit
16 in the stack of Staff exhibits marked as Exhibit S-8?

17 A. I do not.

18 Q. It should be to your side.

19 A. Yes, I do.

20 Q. And looking at it, you see there are some
21 portions that are highlighted in yellow and some that are
22 highlighted in blue?

23 A. Yes.

24 Q. And all of those portions -- and I will give you
25 a chance to verify this -- but they appear to be

1 contiguous at least to the existing CC&N areas for Casa
2 Grande and for Stanfield.

3 Is that, more or less; correct?

4 A. No, it would not. There are a few of those
5 parcels that are contiguous, but there are probably
6 areawise more that's not contiguous.

7 Q. Could you identify which portions are not
8 contiguous among the parts that are recommended by Staff
9 for approval?

10 A. Well, I believe the ones that are noncontiguous
11 we have highlighted on the map S-8 would be parcels 8, 12.
12 Those are the two that are noncontiguous to the company's
13 current CC&N.

14 Q. Okay. So 12 is not in contact with 11 or -- 12
15 is not in contact with 15 then? And 15 is not in contact
16 with Stanfield?

17 A. Well, 12 is in contact with 15, but 12 is not the
18 contact with the company's Stanfield CC&N, so that piece
19 would not be contiguous.

20 Q. All right. Treating those as one piece, though,
21 because Staff is recommending inclusion of both 15 and 12,
22 would you agree that 15, at least, and through 15 and 12
23 are touching the Stanfield CC&N area?

24 A. Correct.

25 Q. Okay. And looking at the map that you have up

1 there, which is either A-3 or A-7 -- I think it's probably
2 more A-3 essentially -- most of the areas where you have
3 requests for service -- well, not all of it is contiguous
4 with your existing CC&Ns for Stanfield or Casa Grande; is
5 that correct?

6 A. That's correct.

7 Q. But a large portion of them are contiguous to
8 that; is that correct?

9 A. Yeah, you have a large portion of both.

10 Q. Okay. Looking at some of the ones that are not
11 actually contiguous and sticking out prominently right now
12 is the B portions that look to be in a kind of light blue,
13 those -- not many of them are actually contiguous to the
14 existing CC&N; is that correct?

15 A. That's correct.

16 Q. Okay. And can you identify who the landowner is
17 for B?

18 A. B is the State Land.

19 Q. And do you anticipate that State Land would be
20 actually building anything on that land?

21 A. Typically State Land doesn't develop it. They
22 partner up with a developer who ultimately does develop
23 that land and they -- State Land has included a request
24 for service as part of this application to be included in
25 the company's CC&N.

1 Q. I see.

2 And still with this patchwork service territory
3 concern, you expressed an opinion about the likelihood of
4 competing applicants jumping in. You characterized them
5 as developer-type utility systems that might be jumping
6 into the empty spaces in between if Staff's position were
7 to be the one that was approved in those circumstances.

8 Does that more or less characterize your
9 testimony?

10 A. Yes, more or less, that would be start-up
11 utilities.

12 Q. Okay. You also discussed in your testimony, I
13 believe, certain efficiencies, and in terms of costs that
14 come to having a larger utility that can provide economies
15 of scale.

16 Do you recall that testimony?

17 A. Yes, I do.

18 Q. Okay. And for those purposes you have a cost of
19 service associated with the larger facilities that reduces
20 the amount that each individual connection has as opposed
21 to some stand-alone that is scaled smaller.

22 Would that be generally the notion?

23 A. Yes.

24 Q. For purposes of the two systems, right now just
25 Casa Grande and Stanfield, do you know if those two system

1 were counted as one system or two separate systems for, at
2 least, the last rate case that Arizona Water has on the
3 books?

4 A. They were separate systems.

5 Q. And they have different costs of service between
6 them?

7 A. Yes.

8 Q. And that is more or less because Stanfield has
9 much fewer connections and Casa Grande has far more?

10 A. Well, it's not just a connection base; it's
11 obviously the rates are based on the cost of
12 infrastructure and the investments the company has made in
13 the system. I think that is probably more of the driving
14 factor.

15 Q. I see.

16 And in any event, Stanfield is a much smaller
17 system?

18 A. Yes, it is.

19 Q. And -- well, okay. Fair enough.

20 In terms of the engineering efficiencies -- well,
21 in terms of all of the efficiencies, I guess, it would
22 still be accurate to say you have these efficiencies in
23 terms of an improved ability to deliver service with less
24 resources but only if the need is there.

25 Would you agree with that?

1 Let me rephrase it this way: If no need ever
2 arrives, then it wouldn't make sense to overbuild the
3 system.

4 Would that comport with your understanding?

5 A. Well, typically as a utility, when you build
6 facilities, like at a plant, you will phase those
7 facilities in over time so that you're building in some
8 portion for growth but you are not building the entire
9 plant out in one single swoop.

10 So you may phase a piece of -- phase a booster
11 station so if you have sufficient land for future
12 expansion or potential treatment, but you may build one of
13 three tanks or you may install two or three of six or
14 seven pumps, but we wouldn't be contemplating going in and
15 constructing an entire facility in day one.

16 Q. Okay. And so for purposes of when growth rolls
17 in, your suggestion would be that initially you would
18 connect them to your existing facilities and then just
19 gradually ramp up the facilities you have to meet them as
20 growth arrives.

21 Is that, more or less, what you are saying?

22 A. Well, some of them may be far enough away that
23 they may be stand-alone facilities, and obviously you can
24 only plan for growth as far as you feel it is certain. So
25 we would not be contemplating purchasing sufficient

1 property to serve six or seven square miles if that was
2 not part of our certificated area or intended to be soon.

3 Q Okay. And I don't remember if there has been a
4 statement about how much -- after the settlement agreement
5 how much acreage is actually included that Arizona Water
6 is seeking.

7 Do you have a total acreage that Arizona Water is
8 looking for?

9 A I believe it's roughly 88 sections.

10 Q 88 sections?

11 A So 88 times 640.

12 Q 50,000?

13 A Subject to check. Bill is much faster in math
14 with his head than I am.

15 Q This is a lawyer's math, so my number is
16 totally --

17 But something less than the original approximate
18 70,000 acres that was originally requested; is that about
19 right?

20 A Yes, subject to check I believe the original
21 request was 111 sections.

22 Q Okay. And for purposes for projecting how much
23 growth you would have to meet in the event of full
24 build-out, how many lots per acre were you assuming or
25 were assumed for purposes of that kind of evaluation?

1 A. We were assuming roughly three units per acre.

2 Q. Okay. And using that, let's say we -- what was
3 it that I tossed out there, 50,000? I don't know whether
4 that is accurate or not, but if that is a reasonable
5 approximation to start out, if we assume that at
6 three units per acre, that would be approximately 150,000
7 units you might have to serve?

8 A. In total, yes.

9 Q. At full build-out.

10 And that would be a sizeable increase from
11 Arizona Water's existing customer base; right? That would
12 be approximately triple your existing customer base?

13 A. It's significant compared to our current base,
14 but if you look at the area compared to our current
15 certificated area, it would not be quite as dramatic as
16 you just described --

17 Q. Fair enough.

18 A. -- on the contrary.

19 Q. My assumption, though, is for purposes of this
20 discussion, if you had 150,000 new connections that had to
21 be served and you were expecting perhaps reasonably that
22 they might arrive and you built facilities to meet the
23 150,000 customers, that wouldn't be responsible until you
24 had some indication that it was coming in parts. And I
25 believe that is what you were getting at in growth with

1 phases.

2 Is that, more or less, correct?

3 A. Correct, and that is exactly what we do with our
4 current certificated area, build and phase facilities
5 according to the demands and requirements for that
6 service.

7 Q. And it looks like -- I think Mr. Judge Nodes
8 actually asked my questions about the stale request for
9 service, so I believe that is actually --

10 MR. HAINS: Thank you. I have no further
11 questions.

12

13 FURTHER EXAMINATION

14

15 BY ACALJ NODES:

16 Q. Mr. Schneider, would you agree that if the
17 Commission were to approve the proposed planning areas,
18 that there would be -- that it would constitute an
19 implicit approval or at least -- let's say implicit
20 approval for future CC&N cases insofar as in Arizona Water
21 Company's case that there would be a minimum, a preference
22 recognized for Arizona Water compared to perhaps a
23 competing entity that may seek to serve within that
24 planning area at some future date?

25 A. I don't see how it would be a preference for

1 that, for Arizona Water versus another entity.

2 And I think earlier there was some discussion
3 about including some language around the planning area
4 approval to such, where it would not prohibit a third
5 party from coming in. But I think it just -- I think as I
6 explained earlier, it just gives the company an additional
7 level of comfort that moving forward and trying to plan in
8 a logical fashion for the future service in that area,
9 that there is some, I guess, approval from the Commission
10 or recognition from the Commission that planning boundary
11 and area is reasonable for that utility to plan for. But
12 I don't see it being a preferential ability that utility
13 provide the service.

14 Q Well, I guess this is what I'm struggling with.
15 On the one hand you seem to be saying, oh, no, there is no
16 real advantage to Global or Arizona Water by having its
17 planning area approved because that is going to come in a
18 future CC&N case, but if that is the case, why is the
19 company so adamant about having its planning area
20 approved, if it's totally wide open for a future
21 consideration of a CC&N within the proposed planning area?

22 A I think the company is looking for the
23 recognition that the settlement agreement and the
24 boundaries drawn are acceptable, are in the best interest
25 of the public, and are logical locations for the company

1 to plan for its ultimate service for water service.

2 I believe that that is what the company is
3 looking for, and that is what that approval would grant.

4 Q It's your expectation that if the Commission were
5 to grant approval of this planning area that you are
6 seeking, that if a request for service were eventually to
7 arise within that planning area, that you would be the
8 designated CC&N holder to serve that particular area for
9 which you seek or get a request for service; right?

10 A If that request for service was sent to Arizona
11 Water Company, then, yes, we would act on that request for
12 service and file for a CC&N.

13 Q Well, and also, if another entity were to seek a
14 CC&N within that approved planning area sometime in the
15 future, presumably Arizona Water would intervene in the
16 case and say, hey, wait; this is in our planning area; we
17 want to serve this area.

18 Correct?

19 A I couldn't speak for what the company would do.
20 I would have to defer to either Bill or somebody. That
21 would be outside of my decision making.

22 Q Now, with respect to the requests for service
23 issue, do you believe it's reasonable for the Commission
24 to grant a CC&N for areas for which no specific request
25 for service is received by the company?

1 A. I think if the granting of that CC&N includes
2 areas without a request for service and they make logical
3 sense not to leave small islands in areas without a
4 provider, then, yes, I do believe it makes sense to square
5 off and round off those areas into a more logical area to
6 provide service so that you don't have facilities stranded
7 outside of a CC&N and the company can also adequately plan
8 for and provide service for those properties.

9 Q. All right. But the argument to the contrary, I
10 think, that has been made in recent years by the
11 Commission is, well, if there is no request for service,
12 why do we need at this point in time to even address the
13 issue; why don't we leave that for another day; maybe
14 circumstances will change, who knows.

15 So if there is no immediate need for service, why
16 not just grant the CC&N for the actual areas in which a
17 development is expected in the near future?

18 A. Well, one significant disadvantage to those
19 properties not being included today or at such time as
20 that filing takes place is that those developers and/or
21 property owners then have to go through the arduous
22 process of getting into a company's CC&N before they can
23 move forward in acquiring their proper pre-plat to obtain
24 their certificate of assured water supply and so on to get
25 their entitlement taken care of on their property. So

1 then we have to go through that arduous process and they
2 have to wait for that process to take place before they
3 have any provider in place to continue forward with that
4 entitlement.

5 So really what we do is the developer incurs
6 additional costs, as well as the property owner, as well
7 as the impact of time.

8 *Q.* On the other hand, though, the disadvantage of
9 granting a larger swath of a CC&N is that the developer at
10 the point in time when he or she develops -- wants to
11 develop the property, they are confined to the entity that
12 has been granted the CC&N; correct?

13 *A.* Yes. That would be the utility, yes.

14 *Q.* So if there were some alternative competing
15 utilities that might be better able, at least in their
16 minds, to serve their development, they may see it in a
17 different light as far as the granting of a CC&N for an
18 area in which service has not directly been requested?

19 *A.* But I think it still comes back to, in the public
20 interest I don't believe that a start-up utility is going
21 to be able to come in in these small parcels and provide
22 service, better service or lower-cost service, than in the
23 staffed utility in that area. So it comes back to visit
24 the developer for the public interest, being the consumer
25 in the end, you are looking out for.

1 Q And has it been your experience -- have you
2 noticed a trend in recent years, to your knowledge, of a
3 movement by the Commission to grant CC&Ns only for areas
4 in which there exists a request for service?

5 A Yes, of recent, that seems to be the direction
6 that the Commission has been going.

7 Q Okay. And I guess it would be fair to say that
8 you don't really agree with that approach from a policy
9 perspective?

10 A I don't agree with that approach from a policy
11 perspective, but I also wholeheartedly do not agree with
12 that process from a public interest standpoint. Being a
13 ratepayer for a utility, I'm not a big advocate of these
14 small start-up utilities, which ultimately other utilities
15 have to come in and provide service to them. When they
16 can't raise the capital or they can't provide the service
17 that is requested, a large utility typically has to come
18 in and provide that interim service.

19 So no, I'm not an advocate of that.

20 Q And you think that the nine-factor test, so to
21 speak, or those criteria, would be a better approach from
22 a policy perspective for consideration of a CC&N request?

23 A Yes, I do. I think that is a much more logical
24 process to go through to gauge which areas should be
25 included and which areas may be premature to include.

1 Q. I guess one of the criticisms that has been
2 leveled at that approach, though, is that then it puts the
3 Commission, for all intents and purposes, into the role of
4 a zoning or planning commission-type role.

5 Is that a consideration or is that a fair
6 criticism that you have concerns with?

7 A. Yes and no. If you look at when a city does
8 their planning boundary and is going to be the water or
9 sewer provider of that development, typically that
10 developer doesn't have a choice of where they may go.
11 It's usually based on that grant and a variance. I still
12 don't believe that a start-up utility is going to come in
13 and competitively provide that utility at a lower cost or
14 at a better reliability or efficiency than the existing
15 utility that is in that area.

16 You know, there are numerous small utilities out
17 there that have difficulty in providing that service day
18 in and day out and meeting all the water quality
19 requirements of the State and the federal government. You
20 typically don't have that with a larger utility as you do
21 with smaller in the state.

22 Q. What about for the areas -- and maybe I missed
23 this -- but the areas for which the company actually seeks
24 the CC&N in this case? And we talked about that. It's
25 represented on A-3 by the black crosshatch.

1 Who is -- is it in every instance there? If you
2 get a request for service, is Global going to provide
3 wastewater service in those areas?

4 A. Well, there is an exhibit. I believe, it's
5 A-8 -- A-7 that defines where the sewer boundaries are
6 from the 208 process. In essence, the majority of the
7 area that is being applied for would provide -- sewer
8 service would be provided by Global.

9 There is a small area kind of bounded by Shedd
10 Road and Hanna from midway east that would be provided by
11 the City of Casa Grande.

12 Q. Okay.

13 A. Hopefully the majority of those would be provided
14 by Global Water.

15 Q. Okay. That is in Global's 208 area?

16 A. Correct.

17 Q. What about the -- and I'm looking now at the
18 planning area map that was attached to the settlement
19 agreement, if you have that.

20 A. Yes, I do.

21 Q. What about the areas outside of the City of Casa
22 Grande's border and outside of the Global 208 plan? Do
23 you know if you were to receive a request for service who
24 would be the -- let me back up. Strike that.

25 Are there any areas for which you seek service,

1 CC&N authority, as represented on A-3, for which there is
2 not a sewer -- a designated wastewater provider either
3 through the City of Casa Grande or Global?

4 A. Yes, there is. There is. As we noted earlier,
5 there is a small strip of land about a mile and a half
6 wide on the southern part of the CC&N, which we had
7 thought that Global had filed for a 208 but was not
8 included in their application.

9 Q. Okay. But that is the only area; correct?

10 A. That is the only area that I'm aware of.

11 Q. Okay. So there would not be any areas, at least
12 that you are currently seeking -- for which you are
13 seeking a CC&N in this proceeding that would, other than
14 that small strip perhaps, if the 208 plan is not
15 ultimately amended, that would have like septic systems
16 for wastewater?

17 A. That's correct.

18 Q. Okay. And presumably if Global seeks an
19 amendment to include that strip, there logically would be
20 approval of Global serving that area under its 208; is
21 that correct?

22 A. That's correct. The extension of that 208 south
23 to the Tohono O'odham Reservation boundary would be a
24 logical amendment to their 208.

25 ACALJ NODES: Okay. All right. I think those

1 are all the questions I have.

2 Mr. Hains, anything further?

3 MR. HAINS: No questions.

4 ACALJ NODES: Mr. Sabo, anything?

5 MR. SABO: No, Your Honor.

6 ACALJ NODES: Redirect?

7 MR. HIRSCH: No, Your Honor.

8 ACALJ NODES: Okay. Mr. Schneider, thank you for
9 your testimony. You are excused.

10 THE WITNESS: Thank you.

11 ACALJ NODES: Okay. We are, I guess, at a
12 decision point. I don't know -- I mean, it looks like we
13 will probably have to come back tomorrow anyway, given
14 that we have Mr. Gray to go after Mr. Symmonds.

15 Would it be everyone's preference to just break
16 for the evening and come back and do both of those
17 witnesses tomorrow?

18 MR. HIRSCH: Certainly that seems logical.

19 Is the Staff going to call Mr. Scott there, who
20 has been participating actively? Is there any plans?

21 MR. HAINS: Actually I had planned on putting
22 Mr. Scott and Ms. Hains, to at least support the
23 engineering portions of the Staff report.

24 ACALJ NODES: Okay. Well, I can't imagine either
25 one of them is going to take a long time. We should be

1 able to finish easily tomorrow, I would think.

2 Why don't we break for the evening, and we will
3 start fresh with Mr. Symmonds followed by the remaining
4 Staff witnesses, if that is okay with everyone. You know,
5 as long as everybody is still available for tomorrow, that
6 is the only question.

7 Okay. Well, we will resume this hearing at 9:30
8 in the morning then, and I will see you all then.

9 (Hearing adjourned at 4:29 p.m.)

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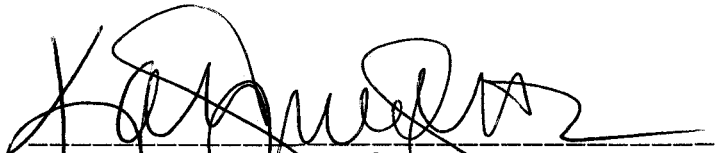
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1 STATE OF ARIZONA.)
2) ss.
3 COUNTY OF MARICOPA)
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7 I, KATE E. BAUMGARTH, RPR, Certified Reporter
8 No. 50582, for the State of Arizona, do hereby certify
9 that the foregoing printed pages constitute a full, and
10 accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.
13

14 WITNESS my hand this 19th day of June, 2009.
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20 Kate E. Baumgarth, RPR
21 Certified Reporter, No. 50582
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